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1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

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Try to mail each lesson as soon as it has been completed.

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MISREPRESENTATION AND FRAUD

If a person makes a false or misleading statement in trying to induce another person to enter into a contract, such a statement can render the contract voidable. That is, the person who was misled can rightfully refuse to go through with the contract. However, this is not necessarily the case if the person merely keeps silent about some aspect of the deal and allows the other party to form other conclusions. Such an occurrence can best be described using the Latin maxim, "caveat emptor," or "let the buyer beware." In other words, the seller is under no obligation to reveal to the buyer facts that would be detrimental to the seller if known by the buyer. But this should not be construed as giving the seller the right to purposely hide any defects so that the buyer cannot find them upon normal inspection. All the seller can do is keep quiet about them and emphasize the more positive aspects.

Misrepresentation can be defined as a statement, or conduct, which conveys a false or wrong impression, which is then acted upon. Misrepresentation may be made in writing, stated orally, or implied by a person's actions. If one merely remains silent, this is not usually considered to be evidence of misrepresentation as previously mentioned under the rule of caveat emptor. A person is not obligated to speak up if aware of some fault in a bargain. However, a person may be guilty of misrepresentation if the person keeps silent about part of the bargain but reveals the rest. For example, if a newspaper published part of a report but not the whole report, it is publishing only half-truths which are considered to be also half-falsehoods. It must further be noted that misrepresentation must be a false statement of facts, not opinion. Anyone who is trying to promote or sell a product is going to be enthusiastic about it and will use such phrases as "best deal in town, highest quality, etc." Such statements are not considered to be misrepresentation since the public expects advertisers to say such things in their exuberance.

A misrepresentation may be made by accident and is not considered a tort. Such an incident is referred to as innocent misrepresentation. If any money was paid because of the misrepresentation, the injured party may recover this money, but can take no further action. One exception to this rule occurs where negligence can be shown when one party specifically relied on another party for true and accurate information but the information given was proven to be false. The courts have held that such people as lawyers, bankers, stock brokers, and other financial advisers who give false statements to their clients, which causes the clients to act upon the given information and consequently lose money, then the clients are entitled to recover any loss from these advisers. Giving false information is considered an act of negligence by persons who owed their clients a special skill. There is no liability if the information was given free of charge to a person who was not a client but only asked for information. However, if individuals make themselves to appear to others as though they possess a special skill, and gives direct advice to other persons, they may be liable for their wrong advice on the grounds of negligence, even if no payment was made. This would not apply to information casually given in a social conversation.

To illustrate the preceding, suppose a person went into a bank and made serious inquiries about a particular investment. It was apparent to the bank counsellor that the person intended to proceed with the investment and the counsellor advised that it would be a good move. However, the investment went quite badly and the person sued the bank. The bank's defence was that it was not liable because the plaintiff was not a customer of the bank. The court held the bank liable regardless of this fact. The court recognized that the bank was under no obligation to give any advice at all, but since it took it upon itself to give the advice, it was under a duty to exercise reasonable care in giving it.

Fraud occurs when individuals make statements of fact, which they know to be false or never believed to be true, intending that other persons should act upon it, which they do to their detriment. A statement is made fraudulently if it is made with a reckless disregard for the truth. The chief difference between fraudulent misrepresentation and other forms of misrepresentation is the intent with which the statement was made. A false statement is not fraud unless the plaintiff can show that it was made with the intention of inducing the plaintiff to act upon it, and that the plaintiff did act upon it relying on its truthfulness, and thereby suffered a loss.

Duress

One night, while driving his car on a deserted road, Mr. Larson was held up by a hitchhiker, who took Larson's automobile. In addition, the hitchhiker forced Mr. Larson at the point of a gun to sign a bill of sale for the car. Later, the police found the car in a used-car lot. The proprietor of the lot displayed the bill of sale signed by Mr. Larson and claimed it gave him good title.

Mr. Larson's agreement to sell was definitely voidable under these circumstances. The agreement was not his own but was forced on him by duress. Duress is overcoming the will of a person by a threat of physical force or bodily detention against a contracting party or a member of the party's immediate family. The threat must be a threat of physical harm or bodily detention. A mere threat of financial loss is not enough, although today many courts will hold that there is duress if the threat is one of physical destruction of the defendant's property.

Undue Influence

Undue influence may be defined as a social or domestic pressure, usually exerted by one in a position of trust, on another person who normally could be expected to trust the person who exerts the pressure. Usually, the pressure is exerted by a physically and mentally strong person upon another who is weaker because of ill health, old age, or mental immaturity.

Case:

Mrs. Sterling nagged at her husband day after day, week after week, and month after month to persuade him to convey title to the farm to her. Finally, reaching the point at which he would do anything to stop her nagging, he deeded the farm to her. Thereupon, she threw him out. Mr. Sterling then claimed that the deed was induced by undue influence, and the court set it aside.

Case:

Mrs. Bernard, a childless widow in ill health, engaged a nurse-companion. As Mrs. Bernard's health failed more and more, she grew to rely on the nurse to a greater and greater degree, even to the extent of entrusting confidential matters to her. Shortly before Mrs. Bernard's death, the nurse induced Mrs. Bernard to make a will, naming her as the sole beneficiary. Relatives contested the will on the grounds of undue influence.

Duress may or may not be present along with undue influence. Usually, we think of duress as involving a threat. Undue influence usually does not involve a threat, but is a persuasive pressure exerted by one who is in a position of trust.

Civil Cases Involving Animals

Damage done by animals has long been a subject of concern to tort law. When an animal's behavior becomes undesirable or causes some injury or loss to another person, the responsibility for its actions usually rests with the owner. For our purposes we can designate all animals as belonging to one of three groups: domestic pets, farm livestock, and wild animals.

1. Domestic Pets

Included in this group would be dogs, cats, hamsters, etc. When an animal of this "monsuetae" natural group (meaning tame by nature) bites or attacks someone, liability rests with the owner. This may be so, even if the animal had shown no vicious tendencies before. The old axiom that "every dog is entitled to its first bite" is not always upheld in the courts. This concept was taken from Exodus, Chapter 21 of the Bible which states that the owner of an ox who gores someone to death on one occasion is to be under no liability; but if the same ox kills a second man, its owner shall also be put to death. This passage would seem to imply that a previously tame animal that suddenly attacks someone does so because of the inherent nature of the animal which was previously unknown to the owner. It was generally believed that the owner could not be held responsible for something of which there had been no warning. However, the rule does not in actual practice work quite as simply as that. Pet owners can be successfully sued the first time their animal bites or attacks. The true interpretation of the rule of liability is known as the "scienter." This means owners are liable if they even suspected their animal to be vicious or dangerous, as for example where a dog is constantly barking at, chasing, and trying to bite passersby. In Alberta, a person who has been bitten by a dog may apply to a Provincial Court judge to have the animal destroyed under the Vicious Dogs Act. The judge will allow the owner to give arguments against having the animal destroyed, but if found to be vicious the judge will order it done away with. The animal, of course, does have some rights and cannot be blamed if it fights back after some form of mistreatment or if it is trying to protect its young.

Problems of liability do arise in law when the case in question is one of an animal which causes property damage or has become a nuisance. Pet owners who allow their dog or cat to roam the neighborhood may be found guilty of trespass or nuisance if the pet destroys gardens and flowerbeds. However, the law recognizes the fact that animals do have natural instincts that their owners cannot be expected to control, e.g. dogs chase cats; cats chase birds; etc. Thus, the courts have held that if an animal exhibits behavior which is normal to its own kind, an action of negligence will not succeed against the owner unless it can be demonstrated that the owner knew the action the animal would carry out and the owner released it to do that action. In one celebrated case an owner of several racing pigeons sued a cat owner for damages when the cat killed his birds. The court held that a house cat is not a naturally dangerous animal and cannot be expected to be caged or fenced in at all times. It was the cat's natural instinct to chase birds and it was the bird owner's responsibility to see that they could not be reached by any cat in the neighborhood. Damages were refused on these grounds.

It is not permitted to use an animal as a weapon, such as to sic a dog on someone, except in cases of self-defence. Some people have the totally false notion that they can threaten others with an attack by their animal for trespassing or some other trivial excuse. This type of threat is an assault and the perpetrator can be sued. However, it is quite permissable to warn would-be trespassers of the presence of the animal and the possibility of being attacked if they should enter the property.

2. Farm Livestock

Owners of livestock have a legal duty to insure that their animals do not trespass upon their neighbor's property, where they might damage crops or other animals. If livestock escape from their owner's field or pasture and cause damage, then the owner is liable in trespass. It is irrelevant whether the animals escaped through carelessness or because someone let them on to the neighbor's property. However, this rule of trespass does not apply in the same manner to animals found on a public roadway. Provided that the animals are under someone's supervision, animals are permitted on roads for many reasons, such as being driven from one pasture to another.

Should motor vehicles collide with livestock on the highway, the burden of proof is on the drivers to show that it was not due to any carelessness on their part. They must be able to show that whoever let the animal onto the highway was negligent and therefore responsible for all damages caused. In Canada it is generally accepted that proper fencing of all farmland adjacent to highways is mandatory where the traffic flow is heavy, but this requirement is less stringently enforced in more rural and less-travelled areas. In such places, drivers are expected to keep a more vigilant lookout for any stray livestock. By way of illustration, on a night in 1968, two horses jumped a four-foot fence from a field on to the adjoining highway. They collided with a car, injuring two Canadian soldiers in it. The Crown sued the horses' owner for failure to exercise reasonable care to prevent his animals from straying onto the highway and creating a danger to traffic. But the court held that the owner was not negligent; his horses were not of a jumping breed or known to jump, and the four-foot fence had adequately retained his horses for the past sixteen years, thus proving that the fence met the required standards. The law in Canada, then, would be correctly interpreted as saying that owners of livestock have

a duty of care not to permit their animals to wander onto a highway, but that each case must be examined to determine who was negligent, if anyone.

3. Wild Animals

Persons who own a wild animal with a dangerous nature, must control the animal to the utmost degree and will be held liable if it injures anyone. This type of animal known as "ferae naturae" (meaning wild by nature), includes lions, tigers, bears and the like. It is the owner's duty to take any steps necessary to prevent such animals from causing injury, even if the owner believes the animal to be harmless. This can include a physical attack or just simply frightening someone.

Children's Torts

Because the question of intention in tort is sometimes irrelevant, children, while they are often immune from criminal prosecution, enjoy no exemption from having tort actions brought against them. This only holds true, of course, if they have attained the age of reason; this age is not delineated any further by the law. Thus, in theory at least, there is nothing to prevent mischievous or clumsy youngsters from being sued in tort for any damage they cause. However, the courts do hold that the behavior of a child cannot be compared with the desired behavior of an adult. Children are expected to conform to the intelligence and experience of other children of the same age. If unable to understand the nature of their action, negligence cannot be attributed to them at all; but, given some understanding of the risk, they must display the judgment and behavior normal for children with the same characteristics.

Case:

The plaintiff, a girl of nine, was hit in the eye by a piece of steel welding rod, about twenty centimetres in length and one centimetre in diameter which had been sharpened at the end that struck her. This spike was thrown by the defendant, a boy of twelve, with the intention of endeavoring to make it stick into a hardwood post at a point which he aimed, but it glanced off the post and struck the plaintiff. The defendant had no intention of either injuring the plaintiff or frightening her. The question whether he is liable in damages for the injury which the plaintiff sustained depends upon whether by throwing the spike as he did he committed a breach of a duty of care which he owed her. The defendant was standing a half metre from the post, and the plaintiff was at most two metres from him and to his left. He knew that the spike was sharp, and therefore that it might injure anyone whom its sharpened end should strike. If he had been an adult the question to be decided would have been whether an ordinary person in his situation exercising reasonable foresight, would have realized that if he should throw the spike at the point on the post at which in fact he aimed there was such a likelihood of its glancing off the post and hitting the plaintiff. The court did not try to treat the defendant as an adult, but examined the actions in the light of the fact that the defendant was only twelve years old. The question was whether or not a boy of twelve should have reasonable foresight and prudence to appreciate the risk of the plaintiff and his actions. The court ruled that children, like everyone else, must accept certain risks from which ordinary care on the part of others will not suffice to save them. One such risk is that boys of twelve will sometimes behave in a foolish manner. The case against the defendant was dismissed.

It is believed by many people that parents are liable to pay for any damage caused by their children. This notion is totally wrong. Because children are liable for their own torts, the parents cannot also be liable just because they are related. However, the parents may become liable if they have in some way brought about the tort, or failed to control their child when such control was expected. A child that has a destructive nature may place a greater burden of control upon the parents than would be required for an ordinary child. Although not legally bound to do so, there are some cases where the parents may want to take the responsibility for their child's tort. Such cases arise when parents wish to maintain good relationships with neighbors and feel morally obligated to pay for any damage. If a civil law suit is brought against the child, the parents defend it as "guardians ad litem," which means the parents act in a purely representative capacity and do not incur personal liability.

Children who behave very badly may become involved with the law and the Youth Court. The Young Offenders Act of Canada gives the court the right to intervene where a child is becoming delinquent. One aspect of the Young Offenders Act should be noted here; namely the section which states that a parent will be held liable for a tort committed by the child where the parent knew the child was doing something wrong and consented to it, the parent instigated the entire matter, or the parent failed to exercise control where called for. Acts which children do completely on their own are normally not the responsibility of the parent.

The obvious reason it is preferable to sue parents and not a child is that children usually don't have any money. If a person does sue a child and wins a judgment, the judgment is valid for twenty years. If the debt can be collected within that time, it is perhaps worthwhile suing. One reason for suing a child is that the parents may have a homeowner's insurance policy that covers torts committed by any member of the family, and thus the plaintiff may recover from the insurance company, not from the child directly.

Case:

After a hunting trip the defendant left his loaded gun on the path leading from his house to the road. His son, aged 15, picked it up and pointed the gun at the plaintiff. The gun went off and struck the plaintiff in the eye causing permanent loss of sight in that eye. The plaintiff sued the father for negligently leaving the gun where his son would play with it. The court held the father to have been negligent stating, "The circumstances of alleged negligence directly causing the misfortune are these: the gun was left at full cock, beside and in the view of a footpath where it would be seen by anyone using the path. It was in an inviting position to any person who noticed it; the day and hour went tend to convey that the gun was unloaded. Defendant's son, of fifteen years of age, took it up in that mistaken belief, and playing with it caused the injury. The boy was not of tender years, but his age was such as to make it desirable not to place dangerous articles, such as loaded firearms, in his way, without caution or warning. Boys of fifteen are just as mischievous and likely to play with guns as children of ten or twelve."

DAMAGES AND THE COURTS

The assessment of damages is one of the most difficult tasks confronting any judge and jury. Awards often involve elements of arbitrariness, because they are dependent on a good deal of speculation and conjecture, especially when dealing with "pain and suffering." When you sue someone on the basis of tort liability and negligence, you must sue in one action only for all your losses, past, present, and future, and the damages will be assessed accordingly once and for all.

In personal injury claims, damages are always divided into two parts, special and general. General damages represent compensation for pain and suffering; if the injuries suffered are such as to lead to continuing or permanent disability, compensation must also be given for a loss of earning power in the future. Special damages consist of out-of-pocket expenses and loss of earnings incurred up to the date of trial. In awarding special damages, the basic principle of assessment is to place the victims in the same financial position, so far as this can be done by an award of money, in which they would have been had the accident not happened. In a few cases, the plaintiff may ask the court to award punitive (exemplary) damages. Punitive damages are awarded when the behavior of defendants has been so arrogant and disagreeable that the court punishes them by making them pay an extra amount to the plaintiff. In some cases plaintiffs ask for only very small sums of money, known as nominal damages, just for the purpose of proving they were right. The court must award some amount as damages. If wealthy persons sue because they want to uphold their name, they are not really interested in money, they just want to defend their legal rights. They would ask the court to award a small amount such as one dollar. Contemptuous damages are seldom awarded, but the court does have a right to do so. Such damages may be awarded in a case so trivial that the person who brought it into court is obviously just trying to win an insignificant argument and using the court to do it. The judge may award the verdict to the plaintiff, but then allow only a tiny sum such as one cent in contemptuous damages and, as a penalty for wasting the court's time, not allow the plaintiff to recover legal fees and court costs.

Another remedy the plaintiff may seek is an injunction, which is a court order to discontinue (cease and desist) an unlawful act. Injunctions are either interim (temporary) or permanent, depending upon the nature of the tort. Generally speaking, the prerequisites for an injunction are the absence of any other adequate remedy and the presence of a substantial harm where it appears that the harm will continue. Where a right is being infringed and money cannot compensate, an injunction will be issued unless it will cause a great harm to the community.

In certain cases the plaintiff may seek an order of replevin. To obtain such a court order, the plaintiff must post a bond with the court saying that the defendant has goods which belong to the plaintiff, usually because they are not paid for or have been unlawfully converted. The court will take the goods from the defendant and return them to the plaintiff on the condition that the plaintiff will continue the action in court to prove ownership to them. If the plaintiff fails to win the case, the court will give the goods back to the defendant.

The problem often arises as to what is considered to be a legitimate claim to make in a civil suit involving personal injuries. Some of the things which a court will consider as legitimate claims are given below. Please note that some of these things are hard to measure in dollars and cents, and so each case must be decided on its own merits.

1. Pain and suffering, past and future.
2. Reduction of life expectancy.
3. Cost of medical care not covered by a provincial health plan.
4. Loss of future income.
5. Loss of employment and present income.
6. Inability to enjoy the social amenities of life (the joys of life).
7. Home nursing.
8. Incidental expenses such as medical checkups.
9. Cost of hiring professional financial management to take over personal affairs.
10. Psychiatric treatment to try to overcome mental depression from injuries suffered.
11. Loss of consortium with spouse (sexual relations).
12. Funeral costs.
13. Mental depression from disfigurement and scars.

The court makes every attempt to be fair to both parties in assessing reasonable damages. If the defendant feels that the damages are excessive, the case may be appealed to a higher court to have the damages reduced to an acceptable amount. Liability is not based upon unjust enrichment of the plaintiff. The plaintiff may also appeal on the grounds that the settlement is too low. Damages which are too high or too low are said to be perverse.

In attempting to lay down specific rules for determining what constitutes a valid claim for economic loss, a multitude of problems arise. Most courts agree that compensation should be made for direct loss, that is, the economic value of property destroyed. With respect to property, damages will not be granted for depreciation in the potential selling price of the property, only for loss actually suffered. Thus, the owner cannot sue for any future loss. The negligent party must replace the property or pay a sum equal to its present market value.

Another problem arises when figuring out the cost of damage done; that being losses of an indirect nature. For example, suppose I operate a moving and storage company and you negligently damage one of my trucks. You agree to repair the damage but it will take four weeks. Do you also owe me the lost profits the truck would have earned? If I have to lay the truck driver off due to lack of work can the driver sue you for lost wages? Could I rent a truck at your expense? Can I hold you liable if I am unable to complete a moving contract because of the loss of the truck and the other party sues me for breach of contract? These questions illustrate the problems that may arise and solutions vary from one jurisdiction to another.

Sometimes victims can get help for their injuries from other sources. For example, Medicare pays hospital bills. If hurt on the job, Worker's Compensation will help. For the most part, these other sources of aid are not taken into account when the court assesses the damages. However, there are some exceptions. A defendant doesn't have to pay for the normal hospital bills which Medicare picks up. Worker's Compensation benefits prevent plaintiffs from even suing their employer, let alone receiving damages. But the award is not to be reduced just because a plaintiff doesn't pay tax on it as would be the case had the plaintiff still been earning money. Any money received from a private insurance scheme doesn't affect the amount of the award.

Based on previous judgments, it seems that courts will not reduce the award for loss of the joys of life just because plaintiffs are in a coma and are not saddened by their plight. But unconsciousness means there can be no award for pain and suffering. The result of these rules is that it can be cheaper to kill someone in an accident than it is to put them in a coma. If they are killed, they don't get any damages for lost joys of life, but only for shortened life expectancy.

The legal representative of a person killed in an accident caused by someone else can sue. The damages awarded will go to the deceased person's estate. The Survival of Actions Act allows the estate to recover for actual financial loss to the deceased but not including damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities.

The Fatal Accidents Act provides that the spouse, or parents, or children of a person whose death was caused by a wrongful or negligent act may sue for damages.

The damages which the court awards will also cover funeral expenses. The damages do not take into account any amounts payable on the death of the deceased under a contract of insurance.

Commencing Legal Action

Individuals who believe that they have been injured or damaged in any way should immediately consult a lawyer describing the facts and circumstances behind their desire to commence legal proceedings. There are many preliminary steps the lawyer must consider. The lawyer must be very careful not to accept a retainer from someone who is in conflict of interests with another party for whom the lawyer is already acting. The lawyer must ascertain whether the prospective client is capable of giving instructions, i.e. the prospective client may be an infant or may not be mentally capable. Once the person's competence has been determined, and the case has not fallen outside a prescribed limitation period, the selection of the proper court is made.

The limitation period merely refers to the time period within which one may validly enforce a claim. "Outside the limitation period," therefore, means that the injured party has waited too long and can no longer sue. The general rules are:

1. An action for damages arising out of a motor vehicle accident must be commenced within one year from the date the accident occurred.

2. An action for debt must be commenced within six years from the date when the debt was incurred **or** within six years from the time when the defendant last acknowledged the existence of the debt.

3. In all other actions for damages, the limitation period is generally six years from the date when the damage was incurred.

The case will usually be heard in the court where the cause of action arose or possibly where the defendant resides or carries on business. Certain actions are said to be local, i.e., they may be brought only in the county where the subject matter of the litigation is closed. An example of a local action is one for the foreclosure of a mortgage on real estate. Other actions are termed transitory, i.e., they may be brought in any county of the province where the defendant may be found. An action for personal injuries is an example of a transitory action. The place of venue (the place where the case is to be heard) may be changed to another location upon application to the court or by mutual agreement between the parties to the law suit.

In instituting an action, you must merely issue a writ, you need not serve it. The writ is prepared by the plaintiff's lawyer and contains the names of the parties to the action and the capacities in which they sue and are sued, e.g., infants (a person under eighteen years of age) may sue or counterclaim by their "next friend" (someone over eighteen, usually a parent or other relative) and may defend an action by their guardian. Also, a person may be sued in a representative capacity such as the administrator of an estate or as the executor of a trust fund. A statement of claim is sometimes issued together with the writ. It will indicate the material facts upon which the plaintiff intends to rely. The defendant will then have an additional ten days to prepare a defence. The defendant may also issue a counterclaim against the plaintiff for any damages the defendant has suffered.

Settlement Out of Court

Disagreements, injuries to persons and property, and breaches of a multitude of laws, all which give rise to legal rights, take place every day. Only a small part of these causes of action are ever litigated by the aggrieved parties. Even when the court proceedings are started, disputes rarely go to trial. This does not mean that the aggrieved parties simply give up their rights, but rather that the majority of these grievances are remedied by settlement.

Settlement is an out-of-court procedure whereby one of the parties to an impending court action agrees to pay certain sums of money or to do certain things in return for a waiver by the other party of all rights arising from the grievance. This process is especially favoured by businesses as it is speedy and definite, and avoids the expense of litigation. A party to a settlement also avoids the risk of losing the case in court. Since there are two sides to a story and since a dispute is rarely a matter of black and white, there is always a degree of uncertainty in predicting which side the court will favor. Of course, the stronger one party's claim appears to be, the more advantageous a settlement that party will demand, and usually obtain. Often a person will start legal proceedings merely to convince the defendant that the plaintiff will not put up with delays or an inadequate settlement. As a result many actions which are started are settled soon afterwards.

Why then are the courts, and the relatively small body of decisions resulting from an enormous number of disputes, so important? There are two main reasons: first, the decided cases supply the principles by which aggrieved parties may gauge the relative merit of their claims, predict the outcome of a possible court action, and settle on a value for their claims; second, the court is the last resort, the decisive tribunal when all compromise fails. It settles the issue when the parties themselves cannot.

Civil Courts and Procedures

Criminal cases are heard in various courts, depending on the gravity of the offence. Similarly, civil cases are heard in various courts; but in civil cases it is the amount of money which is involved in the claim that determines which court will try the case.

Small Claims Court

Small Claims Court is the name in Alberta of the lowest-ranking of the civil courts. The procedure is simple and informal so that many cases can be handled rapidly. Persons may represent themselves in this court and not hire a lawyer, since the amount claimed is often so small that paying a lawyer is not practical. The provincial legislature has seen fit to discourage lawyers from appearing by providing that party costs will be limited at the judge's discretion. This simply means that the judge may add small sums to the judgment given to the winning side as partial payment of the winning party's fee. However, persons may have someone else represent them, for example, a law school student who will handle the case for the experience. The payment of a small court fee covers all the necessary documents and the cost of collecting from the debtor. The plaintiff commences an action in Small Claims Court by filing his claim in writing with the clerk of the court.

Infants (anyone under 18) cannot sue on their own behalf except for a few special cases such as unpaid wages. A suit must be brought on behalf of infants by their "next friend." The purpose of requiring the suit from a next friend is to make certain there is someone to answer to the court for the propriety of the suit and possibly to pay the costs and judgment. It is not practical to allow children to launch civil suits knowing full well that they cannot be held responsible should the case be decided against them.

The Small Claims Act provides that every Small Claims Court judge has jurisdiction to hear a claim in debt up to the amount of $2,000 and in damages (including breach of contract) up to the amount of $2,000. The distinction between debt and damages is that a debt is an exact dollar amount that can be shown to be owed, whereas damages vary in amount according to the facts of the case. For example, an unpaid loan, an unpaid account for goods sold, a month's rent, and an N.S.F. cheque are all exact amounts, whereas the damage arising out of a motor vehicle accident (varies from body shop to body shop) or the amount of money needed to rectify a construction job that was unsatisfactorily completed, are inexact.

If individuals have claims (or counterclaims) for over $2,000 in debt or $2,000 in damages and are desirous of taking proceedings in the Small Claims Court, they may either reduce their claim by crediting payment, or they may abandon the amount in excess of $2,000 so as to bring their demand within the jurisdiction of the Small Claims Court. If they do not wish to credit payment or abandon the excess sum, they must pursue their claim in the Court of Queen's Bench. To pursue a claim in Court of Queen's Bench involves greater costs and it is usually imperative that the party engage the services of a lawyer.

The Small Claims Act states that a judge does not have jurisdiction to hear the following claims:

(a) those in which title to land is brought into question,
(b) those in which the validity of any devise, bequest or limitation is disputed (i.e., cases dealing with wills),
(c) those of malicious prosecution, false imprisonment, defamation, criminal conversation, seduction, or breach or promise of marriage,
(d) those in replevin (return of goods),
(e) those against judges or other peace officers for anything done by them while executing the duties of their office.

If the action does not fall within the above categories, or more sophisticated areas such as injunctions or orders required by statute to be heard by a Court of Queen's Bench judge, it may be proceeded within the Small Claims Court. The following list illustrates some of the actions that may be heard.

1. Action for debt where the amount does not exceed $2,000;
2. Actions for relief against fraud or mistake in respect of any transaction relating to chattels or services;
3. For claims arising out of motor vehicle accidents where damage sustained was $2,000 or less, and if personal injuries were sustained as well, that the total amount is $2,000 or less.
4. Landlord and tenant cases, including non-payment of rent, return of security deposit, damage to the premises.

When plaintiffs have come to the conclusion that they have a cause of action they should then go to the court building and fill out a claim form. A clerk will use the claim form to prepare a Writ of Summons, which is the actual legal document that will be served on the defendant and which will require the defendant to appear in court. A copy of the claim is attached to the summons to provide the defendant with details of the action. The summons also sets the date of trial. The Small Claims Act provides that the date of trial shall not be more than 60 days from the date of issue of the summons and also that the summons must be served on the defendant at least 10 days before the date of the trial.

The most usual method of serving the summons is simply to leave it with the clerk of the Small Claims Court who will mail it to the defendant by double registered mail. If the letter is accepted and signed for by the defendant or someone acting for the defendant, service is completed. If service cannot be effected by double registered mail, the clerk will contact the plaintiff and it will then become the plaintiff's responsibility for arranging service. Service can be made either personally on the defendant, or on a person residing at the defendant's usual place of residence, providing that the person appears to be at least 16 years of age. Frequently arranging for personal service is a frustrating experience, but it must be done if a trial is to be held. It is often easiest to affect service at the defendant's place of employment. If service proves impossible to effect because the defendant will not, for example, open the door, application can be made to a judge of the Court of Queen's Bench for an Order of Substitutional Service. A lawyer should be consulted regarding such an application. Once service has been effected, the Affadavit of Service found on the back of the summons must be sworn in front of a Commissioner of Oaths. This affadavit will provide sufficient proof of service of the summons at the trial.

There are three other points to consider regarding service of the summons. First, service on one partner of a partnership is deemed to be service on all partners. Second, service on one joint debtor is deemed to be service on all the joint debtors. Third, service on a corporation may be made by giving the summons to its president, secretary, directors, or to a manager, agent or officer of the corporation who transacts business for the corporation in the judicial district where the action is to be heard, or by leaving it at or sending it by double registered mail to the registered office of the corporation.

In many actions it is necessary to have at the trial certain witnesses or certain documents. The Small Claims Act provides that the judge may issue a subponea for witnesses to attend to give evidence or produce documents. A subpoena must be served personally on the witness and cannot be served by double registered mail. A person who ignores a subpoena may be arrested. The Small Claims Act further provides that persons served with a subpoena who neglect to appear may be liable to the litigant who requested their presence for all damages sustained by reason of such neglect or refusal.

If the claim is valid and the defendant does not wish to defend, the defendant may simply pay the amount of the claim plus costs to the plaintiff. The defendant should be absolutely certain to obtain a receipt and a written statement that the claim has been fully satisfied, and also make sure by speaking with the court clerk that the plaintiff cancels the court date.

If the defendant wishes to defend the case nothing more need be done before the date of the trial unless the defendant wishes to counterclaim. A counterclaim is simply a claim made by the defendant against the plaintiff, and may arise out of the same set of facts as the plaintiff's claim or out of a completely different set of facts. For example, the plaintiff may claim $850 for damages sustained to his automobile in a car accident and the defendant may counterclaim for $600 for damages sustained to her vehicle. Both parties, of course, will claim the other was negligent.

An example of a counterclaim arising out of a different set of facts might be where A claims $300 from B for a debt owed respecting A's apartment rent, while B counterclaims for $200 from A in respect to goods sold A for which payment has not been received.

If either type of counterclaim is successful, it will be set off against any successful claim of the plaintiff. For example, if the plaintiff proves a claim of $500 and the defendant proves a counterclaim of $450, the result will be a $50 judgment in favor of the plaintiff. If the plaintiff had not succeeded, judgment would have been awarded to the defendant in the sum of $450.

If a defendant intends to counterclaim, the defendant should go to the office of the clerk of the Small Claims Court and fill out the appropriate form. The defendant should fill out the counterclaim at least 10 days before trial so that the clerk can have it served by mail on the plaintiff at least 6 days before trial. If the counterclaim is delivered after this time the plaintiff may ask for an adjournment, claiming surprise, and the judge may allow such adjournment along with what costs deemed to be appropriate. These costs could include witness fees for the plaintiff's witnesses who attended but were not heard.

A defendant has two options available when his counterclaim exceeds $2,000 in debt or $2,000 in damages:

1. the defendant may abandon the excess portion of the claim and obtain judgment respecting the counterclaim in the amount of $2,000, which will be set off against any judgment obtained by the plaintiff; or

2. the defendant may apply so much of the established counterclaim as is necessary to satisfy any claim established by the plaintiff and then sue for the balance.

To illustrate, presume the plaintiff successfully proves a claim of $1950 at trial and the defendant establishes a valid counterclaim of $2,050. The defendant may either obtain a net judgment of $50 ($2,000 being the maximum allowed - $1950, Option 1) or set off the $1950 and retain the right to sue for $100 (Option 2).

As a practical matter, when a counterclaim exceeds $2,000, a Small Claims Court judge will frequently instruct that the matter be heard in Court of Queen's Bench, along with the plaintiff's claim.

Contributory Negligence

The Contributory Negligence Act is particularly relevant to Small Claims Court trials. It most often arises in the context of claims arising out of motor vehicle accidents. If, for example, the plaintiff brings an action against the defendant for $1200 damages that resulted from the motor vehicle accident, and the defendant counterclaims for $1000 for damages suffered as a result of the same accident, the court will proceed to try the matter and will assess each party's liability in the accident. If, for example, liability was assessed at 50-50, in which case the judge attributes negligence equally to both plaintiff and defendant, then the defendant would be liable to the plaintiff for $600 and the plaintiff would be liable to the defendant for $500.

No costs would be awarded to either party. If, however, liability was assessed at 60-40, in that the defendant was 60% liable, then the defendant would have to pay the plaintiff $720, and the plaintiff would have to pay the defendant $400. Costs of the action would then be awarded to the plaintiff because the defendant was more at fault.

Failure to Appear in Court

When a plaintiff fails to appear for trial the judge may dismiss the plaintiff's claim with costs awarded to the defendant, or may adjourn the trial to a later date. If the defendant had entered a counterclaim and the plaintiff's case has been dismissed because of the non-appearance of the plaintiff, the defendant will still have the opportunity to prove the counterclaim. The defendant does not win the counterclaim automatically, but still must prove it.

When the defendant fails to appear for trial the plaintiff does not automatically obtain judgment. Rather the judge may ask the plaintiff to prove the claim. When neither party appears, the judge dismisses the claim and any counterclaim. Should the plaintiff wish to have the matter heard later, the plaintiff will have to start all over and prepare a new claim. Should the defendant later wish to have the counterclaim heard, the defendant should go to the Small Claims Court and prepare a claim. The former defendant will then be the plaintiff in a new action.

Conduct of a Trial

The judge normally opens the day's proceedings by asking if there are any motions for adjournment. The Small Claims Act gives the judge authority to adjourn the hearing of the case to a later date. If either the plaintiff or the defendant is aware by the day before trial that a witness is unavailable, this person should advise the other party that an adjournment will be asked for and, in these circumstances, it is not necessary for the other party to come to court. If this is not done the party requesting the adjournment may, at the discretion of the judge, have to pay the costs of the other party's attendance and the attendance of any witness(es). Once an adjournment is granted, the party requesting the adjournment should send notice in writing to the other party indicating the new date for which the trial has been set. Judges will usually allow one adjournment as a matter of routine. Further adjournments require some justification.

Before outlining the actual courtroom procedure, a preliminary note on court decorum may be appropriate. Judges become quite incensed when parties appearing before the court wear dirty or untidy clothes. In addition, everyone present should stand whenever the judge enters or leaves the courtroom. Finally, the litigants should never address the court from a sitting position. The common courtroom courtesies are appreciated, especially by the presiding judge.

Once the adjournments are dispensed with the trial judge will call the day's trial list. When a particular cause of action is called, the parties shall stand up and introduce themselves to the court. They will then sit down and wait for the case to be called. When the case is called, both parties approach the counsel table, re-introduce themselves and then sit down. If the plaintiff has discovered any errors or alterations in the claim, the plaintiff should, at this time, ask the judge for permission to make amendments to the claim. If the plaintiff discovers the mistakes well before the trial, a letter should be sent by registered mail to the defendant explaining the situation. If this is not done, the defendant can ask for an adjournment of the case on the grounds that this was a surprise move and the defence now needs more time to prepare. Barring an adjournment the trial will proceed. The judge will direct the plaintiff to take the witness stand. The plaintiff will be sworn in and directed to proceed with the presentation of evidence to support the claim.

Where the plaintiff has witnesses present, the defendant should always ask the judge to exclude these witnesses from the courtroom until it is time for them to take the stand. This will ensure that each of the witnesses will give their own independent testimony.

After the plaintiff has presented testimony, the defendant is entitled to cross-examine. The object of cross-examination is two-fold:

1. To weaken, qualify or destroy the case of the opponent, by either attacking the veracity of the witness, or by seeking to contradict or qualify the facts testified to;

2. To establish the party's own case by means of the opponent's witnesses.

After cross-examination of the plaintiff, the plaintiff should then call any supporting witnesses. The plaintiff should ask them to describe in their own words what their knowledge is of the matter at hand. This is called the direct examination. The defendant is then entitled to cross-examine each of the plaintiff's witnesses. Failure to cross-examine witnesses will generally amount to acceptance of their version of the events.

The credibility of witnesses depends upon their knowledge of the facts, their disinterestedness and their integrity. Proportionate to these is the degree of credibility their testimony deserves from the court. Under this heading questions may be put to witnesses in order to elicit their means of knowledge, opportunities for observation, reasons for recollection or belief, and any special circumstances affecting their ability to speak on the particular matter, to expose the errors, omissions, inconsistencies or improbabilities in their story.

After the plaintiff and witnesses have given their evidence, the defendant's side will then be presented. The plaintiff is entitled to cross-examine the defendant or any witnesses.

After the plaintiff and defendant have given all their evidence and the evidence of the witnesses has been presented, the judge will then direct one of them to begin oral argument. This simply means that both parties will attempt to summarize their case in the best possible light. Further evidence may not be given at this time. The litigants must refer in their argument to the evidence which has been given in court

by the witnesses under oath, and stress the facts which they believe to be indicative of the negligence of the other party. After the oral arguments are completed, the judge will then deliver a ruling.

Once the judgment is given, the parties are called by different names. The successful party, which can either be the plaintiff or (where a counterclaim is involved) the defendant, becomes the judgment creditor. The unsuccessful party becomes the judgment debtor. At this point it should be made clear that the Small Claims Court is not a collection agency. Obtaining judgment does not guarantee obtaining the money awarded. If the judgment debtor does not pay, enforcement proceedings must be undertaken in the Court of Queen's Bench.

Appeals

The Small Claims Act provides that an appeal from its decision shall be heard as a "trial de novo" in the Court of Queen's Bench. This simply means the case is heard completely for a second time, including all testimony by the witnesses. The procedure for appealing is somewhat technical and it is at this point that a lawyer should be consulted. It is important to do so quickly since a notice of appeal must be filed within 30 days of the date the judgment is pronounced. If the 30 day period expires, no appeal may be taken. Since it is advisable to obtain the services of a lawyer in a Court of Queen's Bench case, the Small Claims Act provides that a certain amount of a lawyer's fees may be added to the judgment given by the Court of Queen's Bench for costs. The allowance for this fee shall not exceed:

(a) in debt actions

  (i) undefended - 10%, or
  (ii) defended - 20%

(b) in damage actions - 25%.

The percentage is to be calculated as against the defendant on the amount of the judgment awarded and as against the plaintiff on the amount claimed. It should be pointed out that the lawyer's fee may be substantially higher than the costs that may be awarded. This should be taken into consideration before making a decision to appeal.

Enforcement of Judgment

As previously mentioned, the Small Claims Court has no power to enforce its judgments. Enforcement proceedings must be carried out in the Court of Queen's Bench. If the judgment debtor does not make payment, the judgment creditor may apply to the Court of Queen's Bench for a writ of execution. The writ is the document that authorizes the sheriff to seize assets and also to pay money received by the court after the issue of a garnishee summons out to the judgment debtor. The writ of execution is essential for the enforcement of a judgment. Execution of the judgment can be effected as follows:

1. The debtor's goods may be seized and sold, except for certain exempt goods which are necessary for his livelihood, i.e., food, clothing, cooking, utensils, tools of his trade, and furniture and appliances to the value of $2000. In many cases this exemption leaves little to be seized other than an automobile, and many if not most automobiles are already encumbered by chattel mortgages or conditional sales contracts. Similarly, expensive furniture items like color television sets and component stereo units are also frequently encumbered.

2. The execution may be registered against the debtor's land. When a writ of execution is recorded in the Land Titles Office the judgment debtor named in the writ is unable to transfer or mortgage any land until the writ has been satisfied. The writ thus has great bargaining power when the judgment debtor desires to sell this land and frequently the filing of the writ eventually results in the recovery of the judgment when other methods of enforcement have failed. This is especially true in the case of housewives who are judgment debtors but have no wages to be garnisheed and no property to be seized but who own the family home in joint tenancy with their husband.

3. The debtor's bank accounts, safety deposit boxes and partnership interests may be attached by a court order; meaning that these assets are frozen, or made inaccessible to the debtor until the debt is paid. A garnishing order cannot attach money in a joint bank account which is to the credit of a judgment debtor and another person.

4. The debtor's wages, or payments due to the debtor from others, may be garnished; that is to say, the debtor's employer or other debtor is instructed to withhold a portion of the wages or other payments due and to pay the judgment creditor instead. Incidentally, in an examination under oath, the judgment debtor is forced to reveal all assets and income; if the debtor makes false answers, the debtor is guilty of perjury, which is a serious offence. If it is established that the debtor possesses means, but stubbornly refuses to pay, the debtor can be imprisoned for having committed contempt of court.

Court of Queen's Bench

The next higher court is the Court of Queen's Bench. In Alberta these courts try civil cases where the amount of money involved is greater than $2,000 in debt or $2,000 in damages. As mentioned before, the Court of Queen's Bench also functions as a court of appeal from decisions given in Small Claims Court. In Court of Queen's Bench, as is true in any civil action, persons may represent themselves, but they cannot have another person represent them other than a member of the legal profession. Since the procedure is more formal than in Small Claims Court and the amount larger a person should be represented by a lawyer. A case may be tried by a judge, or by judge and jury. If one party wishes a jury trial, a jury notice is sent to the other party. If that party does not wish a jury, he petitions the judge to strike the notice out. The judge makes the final decision. In Alberta, a civil jury consists of six persons, five of whom must agree in order to reach a verdict. If a juror is later discharged for some reason, the case may continue with five jurors and all five remaining jurors must agree.

Here follows the course one would take in pursuing a lawsuit in the Court of Queen's Bench. First, the plaintiff obtains the issue of a Writ of Summons which contains the name of the plaintiff, the name and address of the defendant, and a summary of the plaintiff's claim against the defendant. Service of the writ is next effected on the defendant. Usually it must be handed to the defendant, but in some circumstances the court may grant permission to make substitutional service by means of a registered letter. After serving the writ, the person serving it completes a memorandum on the copy of the writ, recording the date of service.

If the defendant thinks that the claim is not completely justified, or if the defendant has a counter claim, the defendant must indicate to the court non-submission to the plaintiff's claim, by taking a step which is called entering an appearance. This is done by filing a document called an Appearance with the court, indicating that the defendant is contesting the plaintiff's claim. On the eleventh day after service of the Writ of Summons, the plaintiff's lawyer checks the records in the court offices to find out if the defendant has entered an appearance. If not, the plaintiff swears the following in an Affadavit of Non-Appearance:

> "That I did on the _____ day of _____, 19____ duly search in the book kept for entering appearances in the office of this court for the purpose of ascertaining if any appearance had been entered for the defendant in this action. That no appearance had been entered for the said defendant as appeared by the said book and I verily believe that the said defendant has not appeared in this action. That no notice of appearance has been served by or on behalf of said defendant on the plaintiff's solicitor."

The plaintiff is thereupon awarded a judgment against the defendant by default.

If the defendant enters an appearance there will ensue an exchange of documents between the plaintiff and the defendant. These are called the pleadings. First, the plaintiff supplies the defendant with a full statement of claim. In this is set out in detail the circumstances on which the plaintiff's claim is based, and explains how the plaintiff arrives at the figure claimed as compensation for injuries.

The defendant replies to the statement of claim with a detailed defence. The defendant might claim that the events did not occur as described by the plaintiff; or admit that the events occurred, but claim that there was nothing wrongful or injurious about them; or, admit the events and admit that they constituted something wrongful, but deny that the plaintiff suffered the loss claimed. The defendant might also enter a counterclaim againsts the plaintiff at this point. The plaintiff may then prepare a defence to the defendant's counterclaim, together with a reply to the defendant's defence. After all these pleadings, at least ninety percent of all disputes are settled out of court because one side or the other will have realized the weakness of its case.

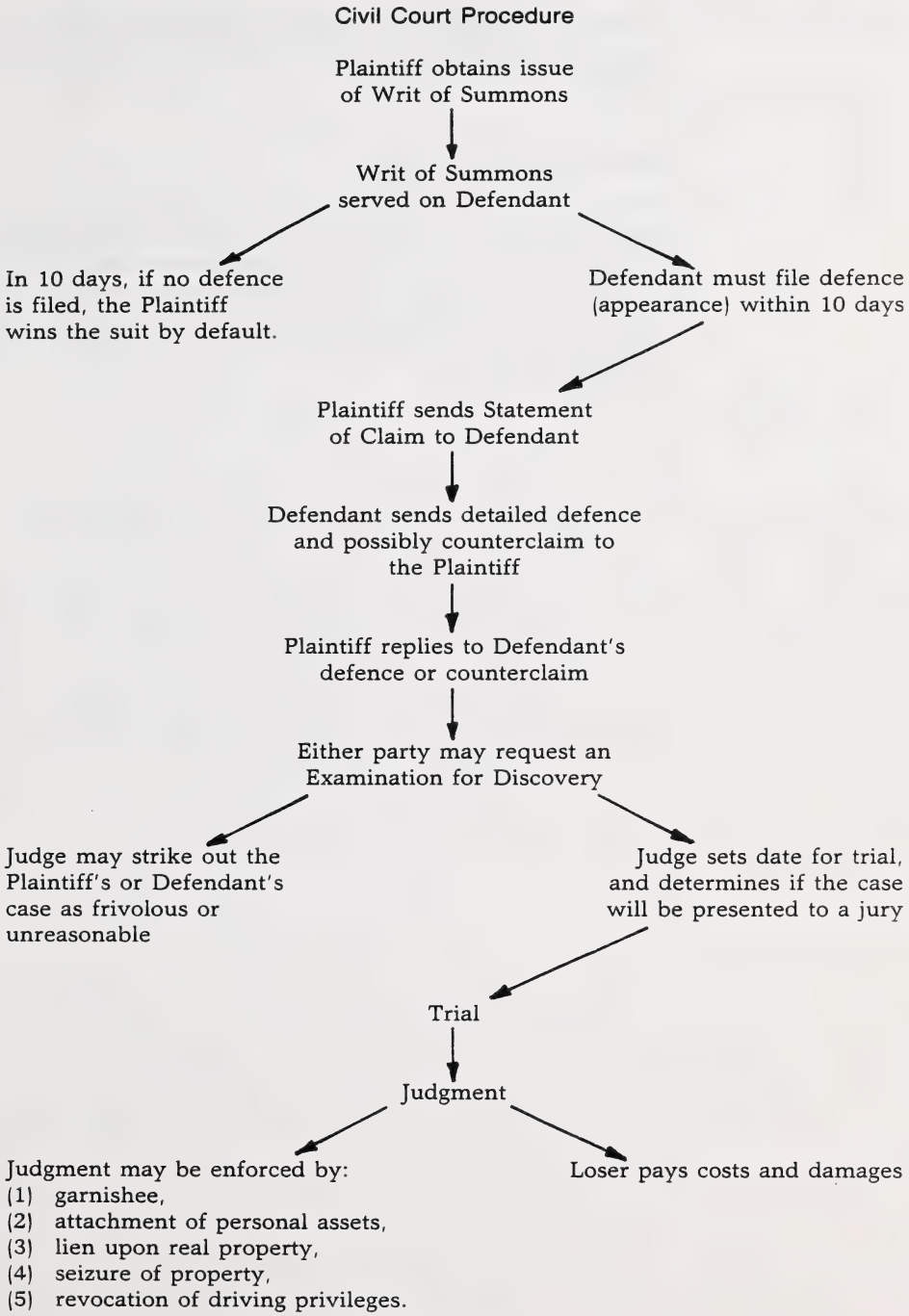
If no settlement has been reached, a number of preliminary steps are necessary before a case comes up for trial. Each party is entitled to examine, previous to the trial, letters, books of account and other documents which the other party plans to produce in evidence, and to be supplied with copies. This procedure is called making discovery of documents to the other party, and it is up to the judge to determine what documents are subject to production and which are entitled to be held confidential. In Alberta, each party and their witnesses can also be interrogated before

a court examiner to make certain all the facts are understood. Such a hearing is called an Examination for Discovery and a formal transcript of all testimony is made. This testimony can be used as evidence during the trial. Quite often after the Examination for Discovery the two parties are able to settle out of court.

If there is still no settlement, the judge, after reading the pleadings and listening to the preliminary examination of the parties and of the witnesses, may disallow a claim altogether or strike out a defence if either is obviously frivolous. If not, the judge decides where it is best to hold the trial; whether to grant the request of either party for an extention of time; and whether the case is to be heard with a jury or by a judge alone. When both sides have completed their preparation the case is put on the list of cases ready for trial. A trial date will be set when the case has reached the top of the list. Depending upon the backlog of cases, the waiting period may be from several months to a year or more. If the trial date arrives and the parties have still not settled, the two sides present their case before the court. The parties and witnesses are examined and cross-examined and all evidence relevant to the case is then presented. The judge, with the aid of a jury if there is one, decides whom to believe and which side should win.

The judge then renders judgment. In a straightforward case, this is done immediately; in complicated cases judgment may be reserved to a later date. A successful plaintiff may have to pay more in legal costs and lawyer's fees than received by way of damages. To remedy such an unsatisfactory situation it is at the judge's discretion to order the loser to make good to the winner many of the winner's legal expenses or costs. Rules of court establish the scale of costs, which includes a lawyer's reasonable charges. If you hire a famous lawyer, you will have to pay out of your own pocket the difference between reasonable charges and the high fee. For example, a man sued for injuries sustained in an automobile accident. He was awarded $4,000 and costs. His lawyer charged him $1,500. Of that amount $1,200 in costs was recovered from the loser, and the man actually had to pay his lawyer $300.

The overall civil court procedure is illustrated in the followng diagram.



Alberta Court of Appeal

This is the highest court in the province and it hears appeals from the lower courts. Three judges hear any one case and a majority of two is required for its decision.

Supreme Court of Canada

A case which has been lost in the provincial appeal court can be appealed one stage further, namely to the federal Supreme Court of Canada. However, the amount involved must be at least $10,000; to be allowed to appeal a case involving a lesser amount, special permission must first be obtained from the Supreme Court of Canada. Appealing to the Supreme Court of Canada is an expensive procedure; among other costs, the lawyer's traveling expenses to Ottawa and hotel expenses there help to swell the total cost.

Exercise 1

Define the following terms. If you are unsure as to the meaning of any particular word, refer to your lesson notes or a dictionary.

1. Caveat emptor - _____

2. fraud - _____

3. guardian ad litem - _____

4. innocent misrepresentation - _____

5. scienter - _____

6. adjournment - _____

_____

_____

_____

7. garnishee - _____

_____

_____

_____

8. general damages - _____

_____

_____

_____

9. injunction - _____

_____

_____

_____

10. judgment creditor - _____

_____

_____

_____

11. judgment debtor - _____

_____

_____

_____

12. place of venue - _____

13. retainer - _____

14. special damages - _____

15. subpoena - _____

16. trial de novo - _____

17. writ of summons - _____

Exercise 2

Fill in the blank spaces in the following statements; only one word is required for each space.

1. _____ is a statement, or conduct, which conveys a false or wrong impression.
2. Giving false information is considered an act of _____ by persons who owe their clients a special skill.
3. There is no _____ if information is given free of charge to someone who is not a client.
4. A statement is made _____ if it is made with a reckless disregard for the truth.
5. When a domestic animal bites or attacks someone, liability rests with the _____.
6. If livestock escape from their owner's field or pasture and cause damage, then the owner is liable in _____.
7. The courts hold that the behavior of a child cannot be compared with the desired behavior of an _____.
8. If a person does sue a child and wins a judgment, the judgment is valid for a period of _____ years.
9. In personal injury claims, damages are always divided into _____ parts.
10. Damages which are too high or too low are said to be _____.
11. An action for damages arising out of a motor vehicle accident must be commenced within _____ months from the date the accident occurred.
12. An action for debt must be commenced within _____ years from the date when the debt was incurred.
13. Every Small Claims Court judge has jurisdiction to hear a claim in debt up to the amount of _____ and in damages up to the amount of _____.

14. If service of a writ of summons cannot be effected by double registered mail sent by the court clerk, it then becomes the responsibility of the _____ to see that service is arranged.

15. If the judgment _____ does not pay the money awarded in a Small Claims Court action, enforcement proceedings must be undertaken in Court of Queen's Bench.

16. The judgment debtor's wages may be _____ in order to pay the amount awarded the judgment creditor.

17. In Alberta, a civil jury consists of _____ persons.

Exercise 3

Indicate whether each statement is true or false by circling **T** or **F** in the space provided. Be sure to check your answers with the lesson notes.

T F 1. A false or misleading statement used to induce someone to enter into a contract may render the contract voidable.

T F 2. The seller has the right to wilfully hide product defects so that the buyer cannot find them.

T F 3. Remaining silent is not usually considered to be evidence of misrepresentation.

T F 4. A false statement is not fraud unless the defendants can show that it was made with the intention of inducing them to act upon it, whereby they suffered a loss.

T F 5. Pet owners can be successfully sued the first time their animal bites or attacks.

T F 6. Under no circumstances can a person use an animal as a weapon.

T F 7. Should motor vehicles collide with livestock on the highway the burden of proof is on the livestock owners to show that it was not due to any carelessness on their part.

T F 8. If children are unable to understand the nature of their actions, negligence cannot be attributed to them.

T F 9. Parents are always liable to pay for any damage caused by their children.

T F 10. When you sue someone on the basis of tort liability and negligence, you must sue in one action only for all your losses, past, present and future.

T F 11. Damages will be granted for depreciation in the potential selling price of the property which has been damaged or lost.

T F 12. In civil cases it is the amount of money which is involved in the claim that determines which court will try the case.

T F 13. A Small Claims Court judge has the authority to hear a case in which the title to land is involved.

T F 14. Small Claims Court judges have the authority to hear cases involving non-payment of rent or the return of a security deposit.

T F 15. Service of a summons on one partner of a partnership is considered to be service on all partners.

T F 16. A summons may be served by sending it as double registered mail.

T F 17. The Contributory Negligence Act most often arises in the context of claims arising out of motor vehicle accidents.

T F 18. Judges will usually allow one adjournment as a matter of routine.

T F 19. A lawyer's fee is always the same as the amount awarded by the court for the successful party's costs.

Exercise 4

1. For what reasons would parents wish to take the responsibility for their child's torts when they are not legally obligated to do so?

_____

_____

_____

_____

_____

_____

2. Under what conditions are parents responsible for the tort of their child?

3. For what reasons would one choose to sue a child knowing that the child does not have any money?

4. What is the basic principle used when assessing the amount to be paid for special damages?

5. When are punitive damages awarded?

6. For what reason would a plaintiff request only nominal damages?

7. Under what circumstances does the court award only contemptuous damages?

8. What are the prerequisites for an injunction to be issued?

9. Discuss some of the advantages of having a legal dispute settled in Small Claims Court.

10. What are the objectives of cross-examination in a trial?

Exercise 5

Case Study Review

1. Your neighbor owns two hills, one on either side of your low land. He frequently engages in target practice, firing from one hill to the other. Have you any means to prevent him from doing this? Explain.

2. A writes a defamatory letter to B, who indignantly shows it to his friend C. Has B grounds for bringing a libel suit against A? Explain.

3. A hotel guest, returning to his room at 3 a.m., slipped and injured himself while crossing the hotel lobby, whose floor was being washed. Explain the hotel's liability.

4. Motorist A, while driving on his proper side of the road, suddenly sees approaching him a car on its wrong side of the road. To avert disaster, A steers into a ditch on his right, severely damaging his car. When sued, the other motorist B correctly claimed that had A swerved into the open left lane, no damage would have resulted. Who will win, and why?

5. While crossing a downtown intersection on the green light at 110 k.p.h., motorist A is hit by a car going against the red light. What damages, if any, will A be able to collect from the other motorist? Explain your answer.

6. Smithers' cow got loose and invaded Connors' garden causing much damage. When Connors tried to drive the animal out with a broom, it knocked him down. Connors sued Smithers for damages. Smithers' defence was that the animal was just protecting itself from Connor's attack. Would this defence likely succeed? Explain.

7. John's dog attacked and bit a delivery man who was making a delivery to the house next door. The dog was the only animal in the neighborhood and had taken it upon itself that it was in charge of all the houses in the area and often raced after such visitors. However, it had never bitten anyone before. Would the delivery man likely succeed in a suit for damages against John? Explain.

8. A small child, age two, was riding in a shopping cart in the local grocery store. The aisles were quite narrow and the child constantly reached out to touch things. His mother made attempts to prevent the child from taking anything from the shelves but, while rounding a corner, the child pulled an item from a large stock of pickle jars and the whole stock came crashing down. The store demanded that the mother pay for the resulting damage. Is the mother responsible? Explain.

END OF LESSON 11

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Teacher's Comments:

_____

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.**

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

PROPERTY LAW

Ownership in Real Property

Ownership in land as well as buildings, crops and other things that may be attached to the land, has a special meaning in our society. This type of ownership is called an ownership in real property or an estate. Unlike personal property, real property is not considered portable. As an owner of real property a person may enjoy a better status in the community; greater credit and buying privileges; and the pleasure of owning one's own home or place of business.

As desirous a goal as it may be to own real property, there are many economic and legal factors to be considered before actually entering into an agreement to purchase.

Buying a Home

This is the largest and most important single purchase of a lifetime for many people. It is usually a purchase that is going to be used and payed on for many years. For these reasons it is advisable to consider all factors before making any decision. The following outline suggests some of the factors a prospective buyer may consider.

Cost:

In buying a house a person must first determine how much to pay. The following points should be taken into consideration.

1. The current price of houses on the market. This can best be done by looking at a number of real estate listings and talking to a number of people who have had recent experience in buying and selling homes.

2. The funds available to tie up in a long term investment.

3. Present earnings as well as possible future earnings.

4. Other sources of income, if any.

5. Interest rates, if it is necessary to borrow money.

6. How much the regular payments will be and the period of payments.

In addition to the regular payment on the house there will be other expenses which should be considered. Some of these are:

1. Taxes. Property taxes may be checked out at the municipal or town office as the case may be.

2. Insurance. An insurance company will give you all the information you want. If you borrow money on the property the lender will probably require the owner to carry insurance.

3. Electricity, gas or any other fuel the person intends to use. Other utilities.

4. Snow removal and any other services that may be necessary in some communities.

5. Maintenance and repairs to the property.

It should be noted here that many consumer organizations have adopted the policy that the total annual cost of owning a home should not be more than one third of the family income.

After a person has considered all the costs and financing involved in owning a home and decided to buy, there are other factors to be considered.

Location

1. The distance from the following:

   (a) Work
   (b) School, if there are children in the family or likely to be
   (c) Recreational facilities that are of interest to the family
   (d) Shopping centres
   (e) Church
   (f) Bus lines

2. Local conditions

   (a) Whether it is the type of community in which you would like to live.
   (b) Condition of neighboring homes.
   (c) Noise; industrial and street.
   (d) Air pollution.
   (e) Drainage. Can the run-off from heavy rains or melting snow get away easily?
   (f) Radio and TV reception.

3. Local regulations, both in effect and those that may come into effect.

   (a) Requirements for the care and maintenance of buildings and grounds.
   (b) Enforcement of traffic regulations and restrictions placed on traffic.
   (c) Health regulations in regard to pets and other animals.
   (d) Zoning by-laws.

These regulations can be obtained at the local municipal office.

When the party intending to buy has located property that is of interest, an offer to purchase will be made. This is the first step in the contract for the sale of real property. The owner may accept the offer, make a counter offer, or simply refuse the offer.

The Offer to Purchase

As with any other contract of sale there must be an offer. The listing of property for sale, either by a sign, or advertisement, or with an agent does not constitute an offer to sell but an invitation on the part of the owner to interested parties to bargain. The offer then, is an offer to purchase made by the prospective buyer. This offer must state clearly, in writing, the price offered, the property bargained for and name of the offeror or agent. This offer must be delivered to the vendor or agent. A time limit should be put on the offer in order not to hinder the offeror in completing the bargain or in making other offers.

The Acceptance

As with other contracts the acceptance must be in the manner prescribed or implied in the offer, and within the time limit set, or if no time limit is set then within a reasonable time. The Statute of Frauds states that a contract for the sale of land must be in writing in regard to its essential elements, in order to be enforceable at law. It is wise then for both parties to make their offer and acceptance clearly and in writing. Once there is a valid offer and acceptance there is a contract for sale, unless there is some valid reason to the contrary, as we shall see in the following pages.

Real Estate Agents' Commission

In Alberta a contract to pay an agent's commission or fee in relation to the sale of real property must be in writing and signed by the vendor. The vendor is the one responsible for paying such costs of selling.

Disclosure of Defects

Patent defects are defects that may be discovered by inspection and ordinary diligence on the part of the purchaser. The rule "Caveat Emptor" applies in regard to these defects.

Latent defects are defects that may not be disclosed by ordinary inspection and diligence on the part of the buyer, and are of such a nature that if known would prevent the purchaser from entering into a contract to buy the property. The defect must also be known to the vendor, or was of such a nature that the vendor should have known of it.

Example

Jones purchased a new house from Acme Homes Ltd. The floors were carpeted and the house fully decorated. Three months after Jones moved in, the living room floor gave way. Examination of the floor and the joists after the carpet had been detached and removed revealed dry rot in the wooden floor and joists.

Jones sued the company for damages. Jones argued that the dry rot was a latent defect that was hidden by a fixed carpet. The company argued that it was not a latent defect in that they had no way of knowing of the defect since the floor had been laid by a flooring contractor and the carpet by a carpet firm under contract to them. The same contractors had done all their floors and carpets in that particular sub-division and all were holding up well. The firm further argued that diligent examination on the part of the purchaser would have revealed dry rot in such an advanced state. Both defences failed and the plaintiff won. The court ruled that although the flooring had been contracted out, the firm should have known of the defect, and further that the carpeting prevented diligent examination of the structure. The company was ordered to rebuild the floor.

Note: The company could probably succeed in a suit for damages against the flooring contractor.

Fixtures

Fixtures are personal property that have been attached to real property and the degree of attachment and the use for which they are intended determines whether or not any specific item is a fixture. The owner of the property may remove fixtures at will. Damages caused by such removal are suffered by the owner and are of no consequence to anyone else.

However, if the owner, or agent, shows the property to a prospective buyer before removing the fixtures, the purchaser has the right to consider the fixtures as part of the real property, unless the owner clearly states otherwise. Usually, the purchaser lists the fixtures and includes or excludes them in the offer to purchase, as the case may be. The reason most purchasers do this is to protect themselves from the removal of fixtures after bargaining has begun. It can be very difficult for a purchaser to recover fixtures or damages for the removal of fixtures in such cases. The buyer has to prove first that the item or items in question were fixtures; second, that the fixtures were removed after the buyer inspected the property; and that the buyer suffered damages as a result. Common fixtures that go with a house are T.V. antennas, drapery rods, large mirrors attached to walls, heating units, including water heaters, and rods for hanging towels, and other similar items.

Example

Roy Arden, a ham radio operator, built a receiving and sending antenna in his back yard. During the winter he listed his property for sale. No mention was made of the tower in the listing nor was any mention made when showing the property, or in the sales agreement.

The new owner was to have possession on May first of that year. With the snow gone and the ground thawed Roy could remove the tower and proceeded to do so. The purchaser observed this and demanded that Roy leave the tower. Roy claimed that the tower was a fixture and that he had every right to remove his fixtures before leaving the premises. The purchaser claimed that Roy did not have this right because he had not exempted the tower from the sale and the tower was material to the sale of the property.

The court held that although the tower had been erected as a radio antenna and as such was indeed a fixture, Roy had allowed the property to be shown complete with the tower and without making any exemption. At that time the tower became a part of the real property. As part of the real property the purchaser was entitled to the tower.

Searching the Title

Provision is usually made in the offer to purchase allowing time to "search the title." The search is done by the purchaser or an agent, usually a solicitor, at the purchaser's own expense. If the purchaser fails to search the title the purchaser is liable for all charges against the property and may not be in a position to recover losses from the vendor.

If the search reveals any charge or encumberance against the property that affects or may affect the buyer receiving good title to the property, and the seller cannot or is unwilling to remove such a restriction, then the purchaser may void the contract of sale and recover all deposits or payments made on the contract.

In searching the title it is the purchaser's responsibility to contact the following and make the suggested enquiries:

1. The local municipal or town office. The purchaser must inquire here to find out what the tax rate is and if the taxes are paid or are in arrears. Often the taxes will be prepaid for the balance of the year. Most urban municipalities supply such services as water and sewer. The purchaser must inquire to determine if these are paid or are in arrears.

2. Local utility companies to be certain the electricity, gas and other utilities are not in arrears.

3. The Land Title's Office to determine if the vendor has good title; the degree of title; who, if anyone has a claim against the property in the form of a mortgage, caveat, lien or judgment. All valid claims are currently registered in the Land Title's Office. The title remains in the Land Titles Office at all times, and as claims are satisfied and the office is notified, they are removed from the title for all time. New claims are promptly registered as the necessary documents are received. These documents are kept for reference thus insuring the accuracy of the claim and aiding any future search of the title.

Registration of Titles in Alberta

In the Land Titles Office (there are two in Alberta, one in Edmonton and one in Calgary), the ownership of every piece of land in Alberta is recorded. In each office the person in charge is known as the Registrar. Farm land is described by section, township, range, and meridian; land in city, town or village is described by lot, block, subdivision, and plan number. This is called "the legal description" of the piece of parcel of land.

If the owner of a piece of land borrows money from a mortgage company, the mortgagee (lender) must register this claim at the Land Titles Office and a note about the mortgage is written on the certificate of title.

If the owner sells the land to another person, the owner signs a document called a transfer which describes the land and the name of the buyer, and delivers this with a duplicate certificate of title to the buyer. When the buyer registers the transfer in the Land Titles Office, the seller's certificate of title is cancelled and a new certificate of title is issued in the name of the new owner. The certificate of title is kept in the Land Titles Office, and the buyer is given a duplicate certificate of title which the buyer keeps as proof of ownership.

Adjustments

During the search of the title it is certain that the purchaser will discover that the taxes are either in arrears or prepaid to the end of the year. It is also likely that water rates, utilities and other charges will be either in arrears or prepaid. In each situation an adjustment must be made. Let us look at two examples to see how such adjustments are made.

Example

Jones completed the search of the title and discovered that the vendor, Henderson, had paid the taxes for the year. Jones is to take possession of the property on April first. Henderson should pay 3/12 or 1/4 of the year's taxes for the use of the property. Jones should pay 9/12 or 3/4 of the year's taxes as he will have the use of the property for the remainder of the year. The taxes are $480 per year. Jones will pay Henderson 3/4 X $480 or $360 above the purchase price, as an adjustment.

Example

Henderson had not paid his taxes so the taxes were three months in arrears. Henderson would owe 1/4 × $480 or $120 in taxes. Jones would then deduct the $120 from the purchase price to pay the taxes.

If a mortgage exists the purchaser may take over the mortgage and pay on it as the vendor had contracted to do, or the purchaser may pay the mortgage off. Either way the purchaser subtracts the balance of the mortgage owing from the total purchase price and pays the vendor the balance.

Once the buyer is satisfied regarding the taxes, title and any claims connected with the property, the buyer should act as quickly as possible to complete the transaction by making the required payment(s), obtaining the deed or transfer of title, and registering the property. Unnecessary delay could mean that a third party might register a claim to the property. Such a claim might be binding and then the buyer's only recourse would be against the vendor. This could be a difficult situation, especially if the vendor has too little money to satisfy the claim.

Title to Real Property

Upon registration of the transfer of title in the Land Titles Office the person becomes a registered titleholder with an interest in Real Property. The owner may hold either of two "Free Hold" titles. The most common being an "Estate in Fee Simple."

An estate in fee simple, sometimes called a tenant in fee simple, is the highest degree of ownership that anyone other than the Crown can have. Tenants in fee simple have the absolute right to deal with the land as they see fit, subject only to the laws of the country. No one else has the right to encroach upon their land, cross over it, construct something which will overhang it, or dig under it, although such rights may be acquired.

A person's interest in real property is called an estate. This estate gives the owner surface and limited air rights. The owner does not necessarily own the petroleum, minerals, water or other material below the surface. The owner has a right to the air above, thus preventing others from overhanging the property. However, these air rights do not extend to the airways or flight paths above as used by aircraft.

The Crown owns the right to all water in lakes, rivers and underground. Anyone is free to use this water as long as they do not trespass or cause suffering or damage to others.

Part of a holder in fee simple's obligation is to pay taxes and abide by the municipal by-laws regarding zoning and property maintenance. Failure to meet these obligations may result in loss of ownership of the property through a caveat or judgment being registered against the property, or by a suit for damages against the owner.

Life Estate

A holder of a "Life Estate" has the same rights and obligations as a holder of an estate in Fee Simple. The difference being the term or duration of the tenancy.

A life estate is for the natural life of the holder and ends with that person's death. Unlike a holder of an estate in fee simple, the holder cannot will the property nor sell it. The holder of a life estate may sell or lease the interest or estate in the property but the purchaser can only gain possession until the death of the holder. The estate then passes to whoever has a legal right to it.

Example

Maxwell owned a large holding in the foothills, part of which was the Pine Hills Ranch, a heavily timbered area. By will he gave a life estate in the Pine Hills Ranch to his wife, Matilda, with the remainder after Matilda's death to his nephew William, in fee simple.

Matilda leased the ranch to the A & C Lumber Company for 33 years. Seven years later Matilda died. William took possession of the Pine Hills Ranch and ordered the A & C Lumber Company out. The lumber company took the matter to court, arguing that they had a legitimate lease. The court however, pointed out that neither William, nor anyone inheriting under William, nor anyone who may have purchased William's Estate in fee simple, may be bound by such a lease. By law, Matilda could not grant any interest, leasehold or otherwise, in the Pine Hills Ranch to endure longer than her life estate.

Tenancy

Although real property often has one owner or tenant in fee simple, there may be two or more tenants who share the ownership or estate in real property.

Tenancy in Common

Two or more persons may hold an estate in property as tenants in common. There exists a unity of possession only. There is no unity of title.

For example, one may hold a title in fee simple while another has a life estate in the same property, as with a son who has inherited from his father, and his mother who received a life estate. Hence, the parties may hold a title in fee simple and be tenants in common at the same time. Each party may sell, lease or will their interest in the property without the consent of the other party or parties.

There are two ways a tenancy in common may be dissolved:

1. By uniting the title and interests into one. This may be accomplished by selling or willing the property to one person or by a mutual agreement to become joint tenants and having the title changed accordingly.

2. By partition. Each tenant in common receives a separate title for a separate part of the real property. In order to accomplish this the parties must make application to the Alberta Planning Commission. If the Commission allows the subdivision, the old title is cancelled and replaced by new titles representing each sub-divided portion.

   Each tenant in common may then become a single owner.

Joint Tenants

Two or more persons, for example, husband and wife, may hold property as joint tenants. Joint tenancy is by the express agreement of all parties as shown on the transfer of ownership. The words "A joint tenant and not as tenants in common" must follow the names of all parties and the document must conclude with the signatures of all parties. All parties are then registered on the title as joint tenants. The characteristics of a joint tenancy are:

1. Join tenants have both unity of possession and title. They share the one title therefore;

2. All have the same degree of title for the same duration. If the title is an Estate in Fee Simple all are joint tenants in Fee Simple. If the title is a Life Estate or for a definite period of time, then all share the same title and time limit.

3. The joint tenancy must begin at the same time. For example, a husband and wife may purchase real property as joint tenants. A person may own property as a single owner and for some reason, such as marriage, wish to change the tenancy. The parties simply fill out the proper documents, send them into the Land Titles Office where a new certificate of title is issued and the old certificate cancelled. The new tenancy then begins.

4. Each has an undivided interest in the whole property. They must act as one in making legal agreements concerning the property. For example, no one may will, sell, mortgage or lease a share or portion of the property without the consent of the others. All must act as one.

Upon the death of one of the joint tenants the entire tenancy goes to the survivors until the last survivor assumes complete title.

Example

Hanson and Maxwell held Stony Acres as joint tenants. Their objective was to hold the land until such time as it could be sold for a substantial profit.

They received an offer that was agreeable to both, but before the acceptance had been formally presented to the prospective buyer, Maxwell was killed in a car accident. Hanson made the acceptance and completed the deal.

Maxwell's widow brought action against Hanson, claiming the share of the proceeds that would have gone to Maxwell. She claimed this as part of Maxwell's estate.

The court held that Stony Acres had never been a part of Maxwell's estate. The property was a joint tenancy at the time of Maxwell's death and as such the entire tenancy would go to the survivor or survivors of the tenancy as the case may be. The survivor or survivors have the sole right of disposal by mutual consent.
(Note: Had the transfer of title to the property been delivered to the purchaser before Maxwell's death the joint tenancy would have ceased and Mrs. Maxwell could have claimed Maxwell's share of the proceeds as part of the estate.)

Termination of a Joint Tenancy

A joint tenancy may be severed by mutual agreement. The joint tenants may become tenants in common or sub-divide their property as tenants in common may.

If one of the joint tenants conveys away their share to a third party, the third party becomes a tenant in common with the others. Where there are two or more remaining joint tenants they shall remain as joint tenants to each other.

Also if two or more are joint tenants in a life estate and one of them acquires the estate in fee simple that person is no longer a joint tenant with the others but a tenant in common. This will not affect the life estate of the other parties.

Acquiring Title to Real Property

The title to real property may be acquired by any person and may be transferred from one person to another. A person may acquire the title by transfer of title, by will or inheritance, or by prescription.

By Transfer of Title

The buyer pays the full purchase price and obtains the title to real property. Payment may be all cash or cash and mortgage.

By Will or Inheritance

When land or an estate is given by a will, the gift is called a "devise." In Alberta estates of persons dying without a will or next of kin go to the University of Alberta under the Ultimate Heirs Act. Usually the property is sold and the money is invested to earn interest until required. The funds are used for scholarships and research assistance at the discretion of the University.

By Prescription

"Prescription" means the acquiring of a title against the true owner by the possession and use of land during a time fixed by law. Under the Statute of Limitations, title to land may be established by long exercise of certain powers (use and possession), and title to land may be lost by the failure to exercise certain powers. When real property is vacant the true owner is said to be in possession.

Actual possession by another person is essential in order to deprive the true owner of the title. In Alberta, a person who fences property, uses it, or builds upon it, pays the taxes on it, and in no way acknowledges the true owner continuously for ten years may become the owner.

If the true owner does nothing to establish title in the required time, the owner may lose the ownership of the property. The time begins from the time on which the owner became entitled to possession of the property. For example, if the owner inherited it, the time begins on the death of the owner. If the person is an infant or a person of an unsound mind, the time does not start until the disability ends.

A tenant may become the owner by ceasing to pay rent, by paying the taxes, by treating the property as his own, and by not acknowledging the true owner for the required number of years.

Under the Statute of Limitations a claim to collect a debt is barred after a certain number of years, but the claim may be revived and a new time limit put into operation by a part payment of the debt, a written promise to pay the debt, or a written acknowledgement which may be interpreted as a promise to pay. In cases of real property claimed, however, after a certain number of years not only is the remedy barred, but the claim itself is destroyed, and no payment or acknowledgment will revive it.

No title can be acquired against the Crown. However, if the land has been granted to some person directly by the Crown, as in the case of land opened for settlement, another person may gain ownership of it by fencing it and living on it for twenty years. Such a person is sometimes referred to as a "squatter."

A person who without authority of any kind enters into possession of someone else's land by occupation, cultivation, or fencing, cannot be evicted except by the rightful owner. If the rightful owner failed to exercise this legal right to regain possession within the time set by law, the trespasser obtains the title to the land.

Agreement of Sale

This document is used when a sale of land is made "on time" or on the instalment plan -- the balance to be paid over a period of time. This document is not registered at the Land Titles Office. It is often used when the buyer makes a comparatively small down payment and the seller does not wish to give the buyer the title and take a mortgage for the greater part of the price. The usual Agreement of Sale provides that the agreement may be cancelled after giving notice if the buyer fails to make payments. A seller sometimes prefers a sale under an Agreement of Sale to a mortgage because it takes some time to foreclose a mortgage.

From the time the agreement is made the buyer is entitled to possession as long as the payments are made. Generally, it is provided in an Agreement of Sale when a stated sum has been paid, or when so many payments have been made, the buyer will be given the title to the property.

Until the buyer has the title the buyer cannot mortgage the property. However, the buyer may sell or will the interest in the property to another person.

Note: If a buyer is purchasing real property under an Agreement of Sale, it is advisable to file a caveat (claim) on the title to the property at the Land Titles Office to show that the buyer has an interest in the land.

Claims against Real Property

Real property may be held as security for any claims against the owner. Generally, the claims are for taxes and special assessments for such things as water supply, sewers, and sidewalks. If these claims are not paid the property may eventually be seized and sold to pay them.

Anyone intending to buy a piece of land should investigate thoroughly to discover if there are any charges against the property. In Alberta these charges are:

1. Mortgages
2. Leases
3. Trusts
4. Caveats
5. Easements
6. Profit a Prendre

Real Estate Mortgages

Under the Land Titles Act, a mortgage on real estate creates a charge against the property, but it does not transfer the title of the property to the mortgagee (the lender). The mortgagor continues to be the registered owner. The mortgage is registered on the title at the Land Titles Office.

The mortgagor (the borrower) is personally liable for the debt, for which as security the property has been mortgaged. The mortgagor's promise to pay the money borrowed, plus the interest on it, is part of the mortgage agreement. The mortgagor's solemn promise or undertaking to do this is called the mortgagor's "personal convenant."

This allows the mortgagee to sue the mortgagor on this personl convenant for arrears should the mortgagor be in default of payments.

Since 1971 the Statutes of Alberta have disallowed this liability in the case of private owners of real property. The mortgagee, where the mortgagor is in default, may either sell the property or take possession of it.

Companies are still liable in Alberta on their personal convenant.

In Alberta, the mortgage document must be registered in the Land Titles Office. The registration gives the mortgage priority over all subsequent registrations affecting the property. The mortgage contract must contain the names of the parties, a description of the property, the amount of the loan, the rate of interest, the method of payment, and the date of maturity.

When the mortage is paid a notice of discharge is filed with the Registrar of the Land Titles Office who then removes the charge against the property.

Leases

When a lease is registered, as it must be if it is for a period of more than three years, a memorandum of it is made on the certificate of title, and subsequent dealings with the land are subject to the lease. For example, if a lease is registered, the owner of the land cannot sell or transfer the land to another party without notifying the lease holder, and arranging for the transfer of the lease to the new owner.

Trusts

A trust exists when a person has the title to any kind of property, and is nevertheless obliged to hold or use the title for the benefit of another person, called the beneficial owner. For example, suppose that West in his will left his farm to North to be held "In trust" for Mrs. West, the widow. North would be the registered owner of the property and Mrs. West the beneficial owner. North would be required to administer the estate for the benefit of Mrs. West and he could, of course, receive a fee for his services.

A trust may be created by will as in the above example, by contract, or by operation of the law. When there is a legal flaw in a will, the law may step in and require the executors of the will to administer the estate as a trust.

Caveats

Caveat means "beware!" This word appeared in an earlier lesson in the term "Caveat emptor" meaning "Let the buyer beware."

A caveat is a notice filed at the Land Titles Office by a person claiming an interest in another person's land. The person filing it (the caveator) claims an interest in the land as specified in the notice, and its effect is that so long as it remains in force, no person can acquire a right superior to that of the caveator by registering a transfer, mortgage or other instrument affecting the land. The result is that if the registered owner desires to deal with the land, an application must be made to the court to discharge or remove the caveat. Notice of the application must be given to the caveator, who will thus have an opportunity to show cause why the caveat should not be discharged or removed. When a caveator (or an agent) files a caveat, an affidavit must be filed in support of the caveat. This is a statement made under oath to the effect that the caveat is not being filed for the purpose of delaying or embarrassing any person interested in it. A person who has bought a piece of land under an Agreement for Sale, where the tile is held by the seller until a part or all of the land is paid for, may thus seek to protect his or her interest by filing a caveat.

Any person filing or continuing any caveat without reasonable cause is liable to make compensation to any person who may have sustained damage thereby, and such damages may be recovered by court action.

Upon the receipt of a caveat, the Registrar in the Land Titles Office makes a note of it on the certificate of title of the land affected by the caveat. The Registrar then sends a notice of the caveat and of the interest claimed under it to the person against whose title the caveat has been lodged.

Easements

An easement is the right which one person has over the property of another person, such as a right of way over land or a right of encroachment, that is, the right to maintain something which projects over or under it. The projection may be part of a building, overhead wires, underground drain, or water pipes.

Profit a Prendre

The exploration of oil in Alberta draws attention to the fact that separate rights may be held to such things as minerals, oil, and gas on a piece of land.

Example

Kasper owned a section of land in Alberta. He was certain that his ownership extended downward without limit and upward to the sky. By strict legal definition he was correct.

One day an oil company representative came to Kasper and offered him a sum of money and a contract for a right-of-way. The company wished to drill a well. Kasper refused to negotiate, stating that no one had a right to anything on or in his land unless he allowed them that right.

Kasper checked his duplicate certificate of title and found that all minerals and petroleum, as well as water, had been excepted from his title and retained by the Provincial Government.

The company brought action against Kasper and won their right-of-way.

There are two legal principles that apply here.

First: Landowners cannot deny a second party access to their own property where no suitable alternate route is available. e.g. The onlyway to get the oil is to cross the land and drill a hole.

Second: No one has the right to restrain development, such as industrial development, that is in the best interests of the general public.

SPECIAL TYPES OF HOME OWNERSHIP

Co-operative Housing

Co-operative housing is co-operative ownership of an apartment building. A co-operative apartment building begins with the formation of a limited company. Usually such a company pays all or enough of the cost of the land it wishes to build upon to obtain the title to the land. It then places a mortgage on the land for the purpose of constructing the apartment building.

New tenants buy a certain number of shares in the company and, in return, are given a lease on an apartment. This is a long-term lease which gives the tenants all the usual rights of ownership. They have the right of possession of their apartment, for which they make regular payments to the company for their share of maintenance, operating expenses, mortgage debt, and taxes.

Because a limited company owns the entire complex, it is the company which must arrange for the financing, including mortgage funds. The shareholders must jointly shoulder the responsibility for interest and repayment of the borrowed money.

Since they own only a limited number of shares in the company, tenants are not liable for the debts of the company beyond their investment. For example, if the company cannot make its mortgage payments when they become due, the tenants are not responsible. But if the company goes bankrupt they will lose their investment in the money they have paid for their shares.

There are some disadvantages to this type of home ownership. The occupants actually have title to only their shares in the company. The financial security of their home depends upon the fortunes of the corporation as a whole. If one of the shareholders in the co-operative fail to meet their financial commitments to the corporation, the other shareholders must, in their own interest, assume these obligations. Also, while the shares that represent ownership of a co-operative unit can be sold, willed, or used to borrow money, they do not, and cannot, give the occupants title to their home.

If tenants wish to dispose of their shares and live elsewhere, they must first offer their shares to the company. They cannot sell them to an outsider unless they have the approval of the board of directors. There may be a delay until the board of directors approves.

Condominium Housing

A condominium is an apartment house in which the apartments are individually owned. Each of the co-owners, or joint owners, buy an apartment and receives the title to it which enables them to sell, mortgage, or exchange their apartment, independent of the owners of the other apartments in the building. They have exclusive ownership of their apartment and, with certain restrictions, may decorate and occupy the premises as they wish.

The basic difference between a co-operative apartment building and a condominium apartment building is that a condominium provides for individual mortgages to cover each resident's dwelling, thus eliminating mutual responsibility. A condominium can be financed by the individual owner in exactly the same was as a single-family house.

In a condominium the owners have a different legal status and therefore somewhat different responsibilities. When they buy a condominium they get the title to their apartment. They are also the co-owners of common areas such as lobby, corridors, elevators, etc. The title to their apartment is recorded in the same way as a house. This allows the owners to take out their own personal mortgage.

Each of the apartment owners must pay their own real estate taxes, which are based on the assessed value of each apartment, plus a proportionate share of the common areaways.

The ownership of a condominium may involve greater personal liability than in the ownership of shares in co-operative housing. The owners are responsible for their share of contracts entered into by the condominium association. They may also be responsible for personal injury damages sustained by anyone in a common area, such as a corridor. However, they can protect themselves by taking out insurance to cover such risks.

One of the chief advantages of the condominium form of housing is cost. A condominium is generally less expensive than a single family dwelling of an equivalent size. Apart from a lower initial price, owners usually have access to many facilities which they could otherwise not be able to afford. Few private homes can boast swimming pools, saunas, tennis courts and billiard rooms. Yet many condominiums do offer these and other luxuries. The costs of such extras for each apartment is substantially cheaper than it would be for a private home.

There are other factors as well. Some people want to own their own home and live down town where land prices are so high that it would not be possible to have a single family dwelling.

Another attractive feature of the condominium is that residents are relieved of the tasks involved in maintaining the common properties. Such things as lawn mowing, snow shovelling, and general maintenance of commonly-owned areas become the problems of a committee, and probably the general manager hired by the committee, whose responsibility it is to care for the property.

There are disadvantages in condominium living. In matters relating to common services or facilities, the condominium dweller must take into account the rights and sensitivities of neighbours. There are also rules and regulations. Each condominium is in fact a self-contained community, and consequently it must have its own set of rules.

A condominium unit, generally speaking, cannot be outwardly designed or decorated to suit the tastes of a particular owner, as a private home could be. Thus the owners, while they can decorate the interior to satisfy personal whims, will have to take the exterior and area arrangements the way in which the developer planned them.

If the owner of a condominium wishes to sell and live elsewhere the procedure is similar to that in selling a house. The costs of selling a condominium apartment, therefore, are somewhat higher than the costs of disposing of a co-operative apartment.

While condominiums are relatively new in Canada, this form of housing has a history extending over centuries. In some countries it was possible to own parts of buildings as early as the twelfth century. Both England and Scotland have permitted the ownership of apartments, for many years, as have many other European countries.

Definitions

"Indenture" is a legal name for a formal or official document.

A "covenant" is a solemn promise or undertaking.

A "demise" is a transfer of property, generally by lease.

BUILDING A HOME

The decision to build a home should be reached only after very careful consideration of all the factors involved. As well as cost, financing, location and other factors already discussed, the buyer assumes certain other responsibilities and problems as a builder.

As a builder you must decide and plan what you are going to build for any or all of the following reasons.

(a) If you wish to achieve a specific goal you must make sound plans and follow them. If you just want shelter, and are not particular about the function and utility of the building, the plans are not so important.

(b) In most areas, especially urban, there are building codes that must be met. These building codes are to insure that builders maintain a reasonable quality in their construction and do not detract from the value of the surrounding area or create any unnecessary hazards. In order to assure the local municipal office that they are not going to infringe upon the local building code, builders must present the municipal office with a full plan of what they are going to build. Once the plan is approved, a building permit will be issued and building may begin.

(c) If the property owner wishes to borrow money on the property or believes that subsequent purchaser may wish to borrow money, then the owner should submit the plans for N.H.A. (National Housing Act) approval. Such approval and inspection by mortgage inspectors will assure that the building is indeed eligible for mortgaging. That is, the building is good collateral.

Once a person has the plans approved he or she may proceed in any of a number of ways.

(a) The property owner may proceed to build the house without any help. The building inspectors for the municipality as well as the electrical and plumbing inspectors will be around at intervals to inspect the work. If the property is mortgaged an inspector from the mortgage company will also come and inspect regularly. The mortgage inspector will also make progress reports to the mortgage company, and progress payments to cover future costs will be based upon the work completed.

These inspections are made no matter who does the actual building.

(b) The owner may elect to build part and sub-contract part or parts. For example, the owner may build the frame and get a finishing carpenter or cabinet maker to do the finer work, an electrician to do the wiring and so on.

(c) The owner may contract with a general contractor to do the entire building. The general contractor may then contract other people, under a subcontract, to do work on the building. The subcontractors are responsible to the contractor and must carry out his orders. The contractor is responsible to the owner for his own actions and those of his employees and subcontractors.

If a home owner hires a general contractor to build the entire house, or a contractor to do any specific work on the house, there is an implied condition that the workmanship and materials used shall be of good quality and shall be suitable for the purpose intended. This warranty does not apply to a house already constructed.

Example

Roy Jennings purchased a lot, made up house plans, and obtained mortgage approval. He contracted to have the house built and the materials supplied by a General Contractor, A & G Ltd.

One day Jennings observed a framing carpenter using inferior material to build the sub-floor. Jennings protested to the carpenter who told Jennings that he had subcontracted this part of the work and was not responsible for the material. Jennings informed the carpenter that unless he stopped at once and obtained the proper materials he would obtain an injunction and enforce specific performance.

Jennings brought action against both the contractor, A & G, and the sub-contractor. The Court held that although he had no right of Action against the sub-contractor regarding material used, his claim against the general contractor was valid. A & G must supply the materials as specified in the contract and must further supervise the work of all employees and subcontractors.

By common law it is not necessary to have a written contract for building. This is an agreement for services and the proper material, and not an agreement for sale. The prudent home builder will have a contract covering such important factors as materials to be used, workmanship, costs, progress payments, liability to third parties, extras and other alterations in plans, completion date and penalties for failure to meet any of the terms to the contract. A verbal contract in something so complicated would be impossible to understand and enforce. The results would be unsatisfactory for both the home builder and the building contractor.

By statutory law the builder must withhold fifteen percent of the total building costs. This law gives a measure of protection to workers, subcontractors and suppliers of building materials.

Anyone who has done work on the house, or supplied materials, and has not been paid, may, within thirty days of the completion of the job, register a claim against the property.

The builder is liable for all such claims up to the amount that the builder is required by law to withhold. Thirty-five days after completion date the builder may pay the contractor the amount withheld or the amount less whatever claims it was necessary for the builder to satisfy.

RENTING REAL PROPERTY

Most people rent living accommodations during at least part of their lives. There may be some desirable advantages to renting as opposed to buying. Some of the advantages may be:

(a) No down payment is required; although often a damage deposit may be required.

(b) A desired location may be easier to obtain than if a person were buying.

(c) Individuals renting usually have greater mobility; they are not encumbered by ownership of real property that they may be forced to sell.

(d) Depending upon the terms of the lease, the landlord is usually responsible for at least the major repairs.

There may be other advantages, depending upon the cost, the type of living accommodation and the clauses in the lease.

There are some disadvantages too. A few of which may be:

(a) No increase in equity. Rent is money spent. House payments increase a person's ownership in the house.

(b) A tenant does not, as a rule, enjoy the borrowing privileges of a home owner.

(c) Lack of freedom to decorate and install fixtures as a person may wish.

(d) There may be conflict between landlord and tenant regarding the fulfillment of the lease agreement.

Before entering into a rental contract (called a lease) as a tenant (called a leasee), there are many factors that should be carefully considered. The law expects both the leasee and the lessor (the landlord) to exercise good judgment and a willingness to fulfill their legal obligations. Failure to fulfill such obligations usually results in a great deal of ill feeling and possible financial loss to either or both parties.

Some decisions a person should make before looking at new living accommodations are:

(a) **Budget.** Careful budget planning will show individuals how much they can afford to spend on living accommodation. As long as they keep within their limit they should be able to meet their legal obligations in the future and avoid defaulting any payments such as rent.

(b) **The cost of renting.** This includes the rent charged by the landlord, cost of utilities such as water and sewer, electricity and gas. Other costs might be parking fees, transportation, repairs and upkeep on the premises. All these, when added to present expenses should not cause persons to exceed their budget.

(c) **Accessibility.** Persons planning to rent should consider renting in locations where they can travel to and from various places with a minimum of difficulty. Some locations that are usually of importance are work, recreation centres, schools, church and shopping centres.

(d) **Neighborhood**. Individuals must inspect the area of interest to them to determine if the surroundings are suitable. Some factors to be considered are excessive air pollution, noise, and the social atmosphere of the neighborhood.

(d) **Type of Dwelling**. There are an assortment of single dwelling units such as houses, condominiums and duplexes as well as suites and apartments available. The single dwelling unit usually has the advantages of quiet, greater privacy, more room and space for parking and hobbies. Some of the disadvantages are the costs and time involved in such things as snow removal, tending a yard and making minor repairs.

Once these decisions have been made individuals are ready to approach several likely landlords and/or rental agencies.

This will give them an idea of what the rentals and other costs are, as well as the type and quality of living accommodation they may expect for the price they can afford.

Aftering selecting a location to rent, they are ready to enter into a rental contract, called a lease. The lease may be either periodic or for a definite term.

A periodic lease runs from week to week or month to month. Each time rent is paid, the lease is renewed for another period.

A term lease runs from a fixed date or time to a fixed date in the future. Payments on this type of lease may be in one lump sum or in any payments that the landlord and tenant agree upon.

The rental contract may be either verbal or written. If the lease is verbal there must be a part performance before it can be enforced. This means the tenant must have taken possession of the property and/or made a rent payment and/or security deposit (often called a damage deposit).

A written lease is enforceable at law, even though it may be very simple and does not cover many of the points discussed below. Whenever the lease does not cover any point and a dispute arises concerning that point the courts will decide the case according to common law principles and local practice or provincial statutes if any apply to the situation. This may or may not be satisfactory to the parties involved.

The Requisites of a Valid Lease - Written Form

1. The names of the tenant (lessee) and landlord (lessor).
2. The location of the premises to be occupied by the lessee.
3. The date the lessee is to have possession.
4. The term of the tenancy.
5. The amount of rent and terms of payment.

Some other terms, though not essential to the validity of the lease, that should be included to avoid misunderstanding are:

1. Payment of utilities.
2. Responsibility for making repairs.
3. If a security deposit is required
   (a) the amount should be noted,
   (b) conditions of forfeiture stated, and
   (c) conditions for the return of the deposit with interest.
4. Landlords right to inspect premises.
5. Terms or conditions for termination of the lease.
6. Installation and removal of fixtures.
7. Subletting.

The Short Forms Act

Some provinces have made statutory requirements of varying degrees to help overcome the conflict that often arises between landlord and tenant. An example of a lease that might be used is given on the next page. Most leases in Alberta are either verbal with performance, or use the lease form of the local rental association. These leases are usually quite detailed and should be read very carefully so that a person fully understands the contract.

Rights and Obligations of Landlord and Tenant

Where the rights and obligations are not specifically stated in a written lease the courts must apply the law in settling disputes. There are provincial statutes dealing with the relationship of landlord and tenant and some legislation under various health acts and property acts that may be applied to landlords and tenants. Some municipalities have by-laws concerning the care and maintenance of property and its use. Zoning by-laws control to a degree the number of families per dwelling.

Wherever statutory law or by-laws do not cover a given situation and the rental agreement has made no provision for such an event, common law and local custom prevail.

Regardless of whether a written contract exists, it is the landlord's right to receive rent as consideration for the use of the premises. The rent may be in money or payment in kind. A good example of a payment in kind occurs when a person agrees to take care of an apartment block in return for accommodation, or a farmer gives the landlord a share of the crop for the use of the land.

In either case, the tenant has an obligation to pay rent. Failure to do so, by cash, services or goods as the contract requires, is a breach of contract.

Where the amount of rent or the delivery of the produce or service is in dispute, the courts will be guided by common law and local custom in settling the disagreement.

This Indenture

made in duplicate the fifteenth day of April A.D. 19 88

BETWEEN John Mc Gee

hereinafter called the lessor, of the first part

AND Herbert Jones

hereinafter called the lessee, of the second part.

WITNESSETH that in consideration of the rents, convenants and agreements hereinafter reserved and contained on the part of the lessee to be paid, observed and performed, the lessor hereby demises and leases unto the lessee, all that certain parcel or tract of land and premises situate, lying and being located at 10515, 51 Street in the town of Calton in the Province of Alberta and being composed of a three - bedroom bungalo, single car garage and two lots together with all the rights, privileges and appurtenances whatsoever thereto belonging or appertaining,

TO HAVE AND TO HOLD the said demised premises and the appurtenances for and during the term of from month to month, to be computed from the

First day of May A.D. 19 88

YIELDING AND PAYING therefore monthly and every month, in advance, during the said term the sum of six hundred dollars, the first of such payments on the first day of May A.D. 19 88

THE LESSEE COVENANTS with the lessor that the lessee shall and will pay the said rental to the lessor on the days and times and in the manner hereinbefore provided; and shall and will promptly pay all water and light rates assessed or chargeable against the said demised premises during the said term; and shall and will not assign the said term or any part thereof nor sublet the said demised premises or any part thereof without the leave of the lessor first had and obtained; and shall and will permit the lessor at all reasonable times to enter the said demised premises to view the state of the repair thereof; and shall and will at all times during the said term keep and at its expiration leave the said demised premises in good repair reasonable wear and tear and damage by fire, lightning and tempest only excepted; and that if default be made in payment of any of the said rent or in the observance and performance of any of the convenants and agreements herein contained on the part of the lessee, the lessor may re-enter the said demised premises and repossess and enjoy the same as of the lessor's former estate; and

THE LESSOR COVENANTS with the lessee that the lessee paying the said rent and observing and performing the said covenants and agreements shall and may peaceably possess and enjoy the said demised premises without molestation or hindrance, and that the lessor shall and will promptly pay all taxes (other than water and light rates as aforesaid) assessed or chargeable against the said demised premises during the said term; and

AND IT IS AGREED between the lessor and the lessee that should the said term be seized or taken under execution or in attachment by any creditor of the lessee, or should the lessee make any assignment for the general benefit of his creditors or becoming bankrupt or insolvent shall take the benefit of any Act that may then be in force for bankrupt or insolvent debtors, the rent for one month succeeding the then current month shall immediately become due and payable and the said term shall, at the option of the lessor, immediately become forfeited and determined; and that these Presents and everything herein contained shall respectively enure to the benefit of and be binding upon the lessor and the lessee and their heirs, executors, administrators and assigns, and every of them, respectively; and that the terms "the lessor" and "the lessee" as used herein shall include the plural thereof; and that the said demised premises are demised and leased hereunder to be used as a family dwelling and for no other purpose.

IN WITNESS WHEREOF the lessor and the lessee have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

B Smith
H Henderson

John Mc Lee
H Jones

Landlord's Right of Distress

At common law, a landlord has the right to *distrain upon tenant's goods,* that is to take possession of them and sell them for rent in arrears.

The rules governing such a distrain briefly stated are:

1. Only the landlord has the right to distrain for rent in arrears. The landlord can be:

   (a) the owner of the property;
   (b) anyone holding an assignment on the property, such as a mortgagee who has taken possession of the property to recover payments in arrears;
   (c) a holder of a superior lease.

2. Rent may be distrained from the day after due date, regardless if rent is payable in advance or at the end of the period of occupancy.

3. A demand for the rent due must first be made. If the demand is not met, then the landlord has a right to distrain.

4. The seizure of goods must be made between sunup and sundown, and only on the premises. The landlord may follow and seize goods that are being fraudulently moved. For example: moved after the due date of the rent for the purpose of avoiding distrain. The tenant is free to move goods at anytime up to and including the due date.

5. Only goods belonging to the tenant may be seized. For example, the neighbour's lawn mower which happens to be on the premises is not subject to seizure.

6. Necessities cannot be seized. All provinces have legislation governing what constitutes necessities. These statues are based on common law and current living standards.

   The list of necessities includes certain dishes, cooking utensils, beds, stove, refrigerator, many articles of clothing, and money to certain limits. This list is changed regularly and varies from province to province. A landlord should investigate this list before exercising the right of distrain, otherwise the landlord may be liable for wrongful distress, and can be subject to the payment of damages.

7. The landlord has priority, in regard to distraint, over most other creditors. The only credit claims to which the landlord is inferior to are chattel mortgages and conditional sales. If the landlord seizes and sells goods that the tenant possesses under either of these the landlord must first satisfy the mortgageee or the title holder in the case of a conditional sales contract. The excess from the sale of such goods is then applied to the rent in arrears.

8. The landlord may seize only sufficient goods to pay the rent in arrears. Excessive seizure allows the tenant the right to sue for wrongful distress.

In order to exercise the right to distrain, the landlord must enter through an unlocked door or window, without force or violence. If this cannot be done the landlord must get a court order and the services of a bailiff in order to exercise this right.

The right of distrain is usually difficult to exercise in modern society. Many items not considered necessities, are financed to, or beyond, their resale value. Modern moving and storage facilities have made it easier for a tenant to remove non-necessities before the date when seizure can legally be exercised. The list of statutory necessities increases regularly. All these factors make seizure more and more difficult to exercise effectively as time passes.

The landlord is not without other remedies in case a tenant breaks any of the terms under a lease. This may be failure to pay rent when due or perhaps the tenant is using the premises for purposes other than those for which they were rented. Even where the lease does not state the purpose for which the premises are to be used, there is an implied condition that the premises shall be used for legal purposes and for the use for which they are intended.

For example, there is an implied covenant that a dwelling house in a residential district shall be used as a dwelling, not a store or some other commercial enterprise. If the house is used for some illegal purpose, such as gambling there is a breach of contract.

The Right of Re-entry by the Landlord

This is the landlord's right to re-enter and resume possession of the premises. Where the right of re-entry is not stated in the lease it is implied by common law. This right is good against tenants for non-payment of rent, using the premises for illegal purpose, failure to take reasonable care of the premises, or any other breach of the lease, either stated or implied.

The right of re-entry is usually exercisable without notice on failure to pay rent. If the right of re-entry is exercised for another breach, notice must be given. The notice must state the reason for the complaint and the required remedy.

If the landlord cannot eject the tenants peaceably, the landlord must then apply to the court for an order and the bailiff will enforce the ejection. Often a landlord enters the premises when no one is about and removes the tenant's goods to a nearby location, then locks the tenant out.

Example

Mrs. Harowits owned an apartment block in an Alberta city. Each apartment was leased as a family dwelling, and tenants were specifically granted the right of "quiet enjoyment" of their apartment.

During the month of February many of the tenants complained of the excessive noise that originated in one apartment during the late evening and early morning.

Mrs. Harowits, after observing the unusual number of people entering and leaving the apartment and hearing the noise, decided to have a police officer accompany her to the apartment. After some difficulty they gained entrance to the apartment and found various games of chance in progress. Most of those present were drinking and a stereo was playing very loudly.

Mrs. Harowits served notice at once that she was exercising her right of re-entry within twenty-four hours. She stated as her reasons that these tenants were interfering with the other tenants' right of quiet enjoyment, and further that the premises were not being used as a family dwelling as stated in the lease.

After his acquittal on a charge of operating a gaming house, the evicted tenant brought action for damages against Mrs. Harowits on the grounds that she had illegally exercised her right of re-entry.

The court held that either of the reasons stated were sufficient grounds for Mrs. Harowits to exercise her right of re-entry.

Note: If Mrs. Harowits had stated as her reason that the former tenants were using the apartment for an illegal purpose she could have had great difficulty in proving her case.

The Right to Sue for Damages

A lease is a contract. In any contract an injured party has a right to sue for damages suffered or to obtain an injunction requiring the offending party to refrain from actions contrary to the contract, either implied or stated.

A landlord may sue for rent in arrears or property damage. The landlord may also exercise right of re-entry as well as sue, or may sue for the deficiency if he has exercised his right of distrain.

Usually cases involving residential property are heard in Small Claims Court. Where the tenant is at fault the court passes a judgment ordering the tenant to pay the landlord within a certain period of time. This judgment is good for ten years. The landlord may, at that time or later, have the court allow the landlord the right to garnishee the debtor's wages for the amount owing.

A garnishee is a court order to an employer or banker to pay the debt to the court out of the employee's wages or deposits. The employee is allowed certain exemptions from the garnishee depending upon marital status. If the garnishee fails to recover the necessary funds, it may be re-ordered as many times as is necessary to satisfy the judgment.

Quiet Enjoyment

There is an implied covenant in our society that anyone legally occupying premises has the right to quiet enjoyment of those premises. This warranty or covenant does not apply to street noise, the neighbor's dogs and such acts of a general nature occurring beyond the premises.

It is a recognition of the fact that individuals have the right to occupy the premises they own or lease without harrassment and hindrance by others. In the case of landlord and tenant, the landlord does not have the right to enter onto the property leased except as stated in the lease or with the consent of the tenant.

Any landlord disregarding the tenant's right to quiet enjoyment could be found guilty of trespassing and/or harrassment. The tenant may obtain an injunction restraining the landlord.

Example

Harry Short leased office space on the second floor of a commercial building. The lease stated that Harry was to be allowed to carry on his accounting practice for three years in that office.

After one year the landlord leased the lower floor to a manufacturer of home and garden ornaments. The noise from the compressors and other equipment made it impossible for Harry to continue his practice.

Harry located a new office and served notice to his landlord of his intention to vacate the premises within the month. The landlord demanded six month's rent according to the lease. Harry refused on the grounds that the landlord had not honoured Harry's right to the quiet enjoyment of his premises. The landlord's defence was that he had in no way harrassed Harry and that the noise was something over which he had no control and for which he had no responsibility.

The courts decided in favor of Harry. The landlord had not exercised proper respect for the rights of other tenants in leasing the first floor premises. The resulting noise was a breach of the lease agreement on the part of the landlord.

Obligation to Repair

The landlord is obliged to provide and maintain the rented premises in a good state of repair fit for habitation and in accord with health, safety and housing standards. The tenant is responsible for ordinary cleanliness of the premises and for the repair of any damage caused either willfully or negligently by the tenant or by anyone permitted on the premises by the tenant. Further, the law provides that these rights and obligations cannot be varied or altered by agreement between the landlord and tenant.

Security deposits

These are often referred to as damage deposits. The tenant, prior to moving in, usually when the lease is signed, is required to place with the landlord a sum of money agreed upon by both parties. Usually the security deposit is to cover any or all of the following situations:

(a) The cost of repairing any damages caused by the tenant or anyone entering upon the tenant's premises with permission.

(b) Rent in arrears. This saves the landlord the costly and time consuming action required to collect such rent by distress or through a law suit for breach of contract.

(c) Sometimes, in the case of a periodic tenancy, if a tenant vacates within a certain period of time, usually three months, the tenant forfeits all or a portion of the deposit to help defray the additional cost to the landlord of cleaning and advertising for new tenants and for lost revenue.

Under the Alberta Landlord and Tenants Act, if the landlord holds a security deposit of money the landlord is actually a trustee and may invest the money in bonds or other securities. The landlord must pay the tenant interest on this money.

It is a common practice for the tenant, often with the landlord, to fill out an "Inspection of Accommodation Report" before occupying a dwelling unit. This report includes the name of the tenant, the location of the property and date of occupancy as well as an appraisal of the condition of each room.

When the tenant vacates the premises are again inspected by the landlord, and an appraisal of damage is made. If the landlord and tenant are unable to appraise the damages, then the landlord must call in a qualified third party within ten days to appraise and/or repair the damages. The landlord must, within ten days of termination of the lease, return the security deposit plus interest less the appraised or actual cost of damages, to the tenant.

Termination of Tenancies: Alberta Landlord and Tenants Act

A weekly or monthly or year-to-year tenancy may be terminated by either the landlord or the tenant upon notice to the other and, unless agreed upon, the notice:

(a) if given by the landlord to the tenant, shall be in writing and signed by the landlord or agent,

(b) shall be delivered to the person receiving the notice either personally or by mail,

(c) shall be given on or before the last day of one week of the tenancy to be effective on the last day of the week following; in the case of weekly tenancy,

(d) shall be given one month in advance in the case of monthly tenancy,

(e) shall be given sixty days before the year end in the case of a yearly tenancy.

Taxes and Services

Who shall pay, the landlord or the tenant? In many places the tenant is obliged to pay the land taxes, especially on farm and commercial property. The taxes, if allowed to fall in arrears, are charged against the land, and if allowed to continue in arrears, the municipality may sell the property at a tax sale for taxes in arrears. For this reason landlords prefer to pay the taxes themselves. The cost of the taxes is naturally passed on to the tenant in the rent charged.

Services, such as water, power and fuel are generally paid by the tenant unless there is an agreement to the contrary or the living unit happens to be a part of a larger unit, as in the case of a single room or basement suite.

Fixtures

Fixtures are determined by their degree of attachment and intended purpose. For example, a tenant may put up towel racks, drapery rods, mirrors and similar items. The tenant may remove these on or before the last day of tenancy, but is liable for damages caused by the removal of these fixtures.

Repair parts used in fixing plumbing and heating units, sidewalks or any part of the premises become a part of the dwelling and are not fixtures and cannot be removed.

INSPECTION OF ACCOMODATION REPORT

IMPORTANT

COMPLETE THIS FORM IN DUPLICATE. IT IS IN THE BEST INTERESTS OF THE TENANT TO ASSURE THIS IS DONE CORRECTLY. THIS FORM IS TO PROVIDE AN ACCURATE RECORD OF CONDITION OF RENTED PROPERTY FROM THE DATE TENANCY BEGINS UNTIL TERMINATION. THE TENANT OR LANDLORD IS GIVEN THREE DAYS FROM DATE OF OCCUPANCY TO COMPLETE THIS FORM WHICH SHOULD BE SIGNED BY BOTH THE TENANT AND HIS LANDLORD OR AUTHORIZED AGENT. EACH PARTY SHOULD RETAIN A COPY.

NAME OF TENANT(S) _____

ADDRESS OF PREMISES _____

PHONE NUMBER: HOME _____ BUSINESS _____

DATE OCCUPIED _____

DATE VACATED _____

FORWARDING ADDRESS _____

NEW PHONE NUMBER: _____ BUSINESS _____

KEYS RETURNED: _____

NAME OF LANDLORD AND/OR AGENT _____

ADDRESS _____

PHONE NUMBER: HOME _____ BUSINESS _____

NAME OF CARETAKER _____ PHONE _____

AMOUNT OF SECURITY DEPOSIT PAID - $ _____

INTEREST - $_____ ESTIMATED COST OF DAMAGES $_____

REFUND TO TENANT $_____

IN			OUT		
KITCHEN	OK	DAMAGE	KITCHEN	OK	DAMAGE
STOVE			STOVE		
FRIDGE			FRIDGE		
SINK			SINK		
COUNTER TOP			COUNTER TOP		
CUPBOARDS			CUPBOARDS		
WALLS			WALLS		
FLOOR			FLOOR		
CEILING			CEILING		
ELEC. FIXTURES			ELEC. FIXTURES		

NOTES _____ NOTES _____

IN			OUT		
LIVING ROOM	OK	DAMAGE	LIVING ROOM	OK	DAMAGE
CARPET			CARPET		
WALLS			WALLS		
CEILING			CEILING		
DRAPES			DRAPES		
ELEC. FIXTURES			ELEC. FIXTURES		
NOTES			NOTES		
MASTER BEDROOM	OK	DAMAGE	MASTER BEDROOM	OK	DAMAGE
FLOOR/RUGS			FLOOR/RUG		
WALLS/DRAPES			WALLS/DRAPES		
CLOSETS			CLOSETS		
DRAPES			DRAPES		
NOTES			NOTES		
SECOND BEDROOM	OK	DAMAGE	SECOND BEDROOM	OK	DAMAGE
FLOOR/RUG			FLOOR/RUG		
WALLS			WALLS		
CLOSETS			CLOSETS		
DRAPES			DRAPES		
NOTES			NOTES		
BATHROOM	OK	DAMAGE	BATHROOM	OK	DAMAGE
FLOOR			FLOOR		
VANITY/SINK			VANITY/SINK		
TUB/SHOWER			TUB/SHOWER		
TOILET			TOILET		
NOTES			NOTES		
	OK	DAMAGE		OK	DAMAGE
HALLWAY			HALLWAY		

Assignment and Subletting

Both tenant and landlord may assign their rights and obligations under a lease unless there is an agreement to the contrary.

If the landlord's rights are assigned the tenant must be notified in writing of the change. The tenant pays all future rent to the assignee. The tenant has the same rights and obligations with regard to the assignee as the tenant had with the landlord.

If the tenant sublets the tenant is still liable to the landlord according to the terms of their contract or according to the law. The tenant subletting is responsible to the first tenant. The first tenant is in fact the landlord of the person subletting.

Example

Johnson sublet his apartment to a friend, Richardson, for three months. Richardson was to send the rent money to the landlord on the first day of each month.

Johnson returned home to discover that his landlord was about to initiate action against him for non-payment of rent and damages caused to the premises. The landlord decided to exercise his right of re-entry and served Johnson with an eviction notice.

Johnson sought legal aid, hoping to divert the entire action toward Richardson. He discovered that by common law, the law of contracts, and the law of landlord and tenant, that he was liable for both rent in arrears and the damages. In order to recover his losses Johnson could sue Richardson, as Johnson was considered to be Richardson's landlord.

Increasing the Rent

In the case of a tenancy which continues indefinitely until notice is given by either party, such as a month-to-month tenancy, if the landlord wishes to raise the rent the landlord must give the tenant 90 days notice in Alberta of any such increase.

Where a lease is for a definite term, such as one year or two years, the landlord is not permitted to raise the rent during the term of the lease. The landlord may raise the rent for the next lease term by notifying the tenant near the end of the term that if the tenant wishes to stay on for another term a stated higher rent will be charged.

Exercise 1

In Section A is a list of terms. In the space provided at the left of each statement in Section B write the letter of the term which corresponds with it. There are more terms in Section A than you will need.

Section A

(a) Prescription
(b) Real Estate
(c) Adjustment
(d) Caveat
(e) Mortgagee
(f) Fixture
(g) Encumberance
(h) Deed
(i) Mortgage
(j) Demise
(k) Latent Defect
(l) Easement
(m) Mortgagor
(n) Zoning by-laws
(o) Indenture
(p) Joint Tenants
(q) Assignor
(r) Eminent Doman
(s) Tenants in Common
(t) Co-operative Housing
(u) Agreement of Sale
(v) Condominium Housing
(w) Interest

Section B

_____ 1. A pledge of property by a debtor to a creditor as security for a debt.

_____ 2. A warning. In real estate a warning that a claim or charge exists against the title to a parcel of real property.

_____ 3. A person or company that receives a pledge of real property in return for a loan of money.

_____ 4. Consisting of immovable property such as land and houses.

_____ 5. A person or a company who give a pledge of real property in return for a loan received - a debtor.

_____ 6. Arrange expenses and costs so that each party pays his just portion.

_____ 7. Imperfections that are hidden to normal inspection.

_____ 8. Something firmly attached to real property so that it is no longer portable.

_____ 9. Uninterrupted use or possession for a period fixed by law so as to give title or right to property.

_____ 10. Right-of-way over another's land; e.g. overhanging eaves.

_____ 11. To grant by will title to property.

_____ 12. Under this plan, the seller retains title to the property until all, or a specified amount, of the purchase price has been paid.

_____ 13. An apartment building where a person becomes the legal owner of an apartment by paying for it and receiving the title to it.

_____ 14. Each owner has an undivided interest in the estate.

_____ 15. A new tenant buys a certain number of shares in the company, and in return, he is given a lease on an apartment.

_____ 16. The rent paid for the use of money borrowed.

_____ 17. Two or more owners have separate interest in a property.

Exercise 2

In each of the following statements note the underlined word or words. If such statements are correct do not make any changes. If incorrect draw a line through the incorrect underlined word(s) and write the correct answer in the space provided. The first one is done for you.

✓ 0. The seller of real property is under no obligation to disclose defects.

_____ 1. A person may obtain an apartment in a condominium housing project simply by purchasing an apartment.

_____ 2. An unpaid supplier may register a lien against property for which the materials were delivered, even though a contractor took delivery of the materials.

_____ 3. A joint tenancy may be severed by mutual agreement.

_____ 4. Fixtures are personal property and are not considered part of the real property.

_____ 5. If a contractor subcontracts the plumbing to a plumber, he will not be liable to the owner for any plumbing defects.

_____ 6. A person having a Life Estate in real property may sell or will the property to another person.

_____ 7. It is the responsibility of the seller to search the title to real property.

Exercise 3

Complete the following statements.

1. The ownership of every piece of land in Alberta is registered in the Land Titles offices located at _____ or _____.
2. A description of land according to its location with regard to section, township, range, and meridian is called the _____ _____.
3. The document which is kept at the Land Titles Office showing the name of the registered owner is called the _____ _____.
4. The document which the buyer is given by the Land Titles Office to take and keep as proof of ownership is called the _____.
5. A prospective buyer should make a search in the local municipal office to see if there are _____ charged against the property.
6. The highest degree of ownership that anyone other than the Crown can have is that of a _____.
7. The person in charge of the Land Titles Office is called the _____.
8. In Alberta, if a tenant in fee simple dies without a will and without heirs or relatives the tenant's property goes to _____.

Exercise 4

In the space provided at the left of each statement write in the letter of the term which corresponds with it.

(a)	distraint	(e)	subletting	(i)	seize
(b)	rent	(f)	quiet enjoyment	(j)	security deposit
(c)	lease	(g)	lessee	(k)	exempt
(d)	fixture	(h)	periodic tenancy	(l)	lessor

_____ 1. The practice of a tenant leasing to another party.

_____ 2. Something that is specifically not included.

_____ 3. A rental contract.

_____ 4. Landlord

_____ 5. Personal property attached to real property.

_____ 6. A landlord's right to take and hold goods for rent in arrears.

_____ 7. A lease that is renewed with each rent payment.

_____ 8. Consideration in a lease.

_____ 9. Tenant

_____ 10. Take possession of and hold goods.

_____ 11. A money guarantee against future damages.

_____ 12. The right to be free of interferance or harrassment.

Exercise 5

1. What three remedies are available to the landlord when the tenant's rent is in arrears?

   (a) _____

   _____

   (b) _____

   _____

   (c) _____

   _____

2. What is meant by the landlord's right of distress or distraint?

   _____

   _____

   _____

   _____

   _____

3. In exercising the landlord's right of distress, it may be found that some of the tenant's goods are not on the premises. Which, if any, of these goods not on the premises may the landlord seize?

   _____

   _____

   _____

   _____

4. What general classes of goods belonging to the tenant are exempt from seizure?

   _____

   _____

   _____

   _____

5. A tenant leased property for a definite term of one year. There was no mention either orally or in the written agreement about raising the rent. After six months the landlord wanted to raise the rent. What is the general rule about this?

_____

_____

6. At the end of a lease term, if the landlord proposes to raise the rent for the next lease term and the tenant does not agree with the landlord about this, what may the tenant do?

_____

_____

7. A tenant on a farm offers to pay the landlord rent "in kind." What is meant by this?

_____

_____

8. What remedies has the tenant for a breach of "quiet enjoyment" by the landlord?

_____

_____

_____

9. Under what conditions is a tenant generally permitted to remove household fixtures which the tenant has installed on the property?

_____

_____

_____

Exercise 6

On pages 23 and 24 of this lesson is a short form of lease in general use in Alberta. Read this over carefully, and then answer the following questions. (Copies of this form may be obtained at a stationery store).

1. When is the rent payable?

   _____

2. State what the tenant promises to do concerning each of the following:

   (a) The manner of paying the rent.

   _____

   _____

   _____

   (b) Water and light charges.

   _____

   _____

   _____

   (c) Subletting the property.

   _____

   _____

   _____

3. State what the landlord promises if the tenant pays the rent and keeps other promises made.

   _____

   _____

   _____

   _____

Exercise 7

1. Harrison owned a farm that had a section of cultivated land and two quarters of grazing land. After he died his will left a Life Estate in one-half of his farm lands to his wife. Their son, and only child, John, inherited the farm as an Estate in Fee Simple.

   John passed on, leaving his estate to his wife and child.

   Soon Mrs. Harrison, the child's grandmother sold her half of the farm to a third party and retired to live in town, where she eventually passed on.

   John's widow claimed the title to Mrs. Harrison's Life Estate on behalf of the child. She argued that the child, John's rightful heir, should receive the title to the property upon Mrs. Harrison's death just as John would have, had he been alive.

   The purchaser argued that he had purchased the farm land, paid the taxes and improved it. The land, he claimed, was his.

   Who is in the right? Explain your answer.

   _____

   _____

   _____

   _____

   _____

2. Jones entered into a contract with a general contractor to have a house built. The contractor went ahead with the building as agreed and Jones made payments to the contractor according to the progress of the work.

   Upon completion, Jones had paid the contractor $25,500 of the $30,000 total price. The manager of the contracting firm requested the $4,500 balance immediately to pay off the building suppliers.

   What should Jones do, hold the balance or pay up immediately. Explain your answer.

   _____

   _____

   _____

   _____

   _____

3. Jones rents an apartment for $225.00 per month. On March 30 the landlord phones Jones and tells him the rent will be $250.00 per month starting May first. On May first Jones offers the landlord $225.00. The landlord demands that Jones pay the $250.00 or get out. Jones refuses stating that proper notice of the increase was not made.

   Is Jones within his rights in refusing to pay the increased rent? Explain.

4. While living in a house he had leased, Bill put up towel rods, a wall mirror, T.V. antenna and replaced a worn kitchen faucet and set up a small metal tool shed in the back yard.

   Can Bill legally remove any or all of these items when he terminates his lease? Explain your answer.

5. One day a stranger appears at the door of the house Jones has rented and orders Jones to move out within the month. Jones shows the man his lease which does not expire for another five months. Jones says he will move when the lease expires. The stranger claims to have purchased the property and that he is the new landlord. Can the new landlord evict Jones? Explain your answer.

_____

_____

_____

_____

_____

_____

_____

_____

_____

6. Egbert and Hind own a large tract of ranch land as 'tenants in Common.' Egbert invested 60% and Hind 40% of the original capital. Hind decides to sell his share and retire. He is offered twice as much as his original investment.

   (a) Can Hind accept this offer? Explain.

   _____

   _____

   _____

   (b) If Hind does accept will the new owner receive an 80% interest in the property? Explain.

   _____

   _____

   _____

END OF LESSON 12

LESSON RECORD FORM

3430 Law 30
Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____
Address _____
Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____
Correspondence Teacher

St Serv 1-86

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.**

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

CONSUMERS AND THEIR CONTRACTS

Every time you purchase or even just agree to purchase something, you make a contract. This can range from buying a newspaper to the purchasing of a house. However, before we can discuss the ways in which the law will enforce such consumer contracts, we must be able to determine whether or not a legal contract has, in fact, been entered into.

A contract is an agreement, or an exchange of promises, which the law recognizes as binding on the parties to it, and which the courts will enforce.

On the subject of contracts we are concerned only with those things which persons are obliged to do or not to do because they have agreed to do or not to do them.

The law recognizes two kinds of contracts:

(a) the simple contract;
(b) the specialty contract.

A simple contract is any contract not under seal. It may be oral (spoken words only) or written, or it might be implied.

Many oral or implied contracts may be enforced by the courts. There is a common error that a binding contract does not exist unless there is "something in writing." This is not the case. Although certain types of contracts must be in writing to be enforceable, many oral contracts are enforceable. They may also be implied by the conduct of the parties. Individuals make contracts every day of their lives. They make contracts whenever they buy a newspaper, ride on a bus, or agree to do a job for someone else.

Implied Contracts

A contract may be implied by what the parties do. It may not be necessary for either party to say a word about an agreement.

Example

Henry gets on a bus and pays his fare. He does not say anything but he expects the bus driver to give him a ride to a certain stop. This is an implied contract. It is taken for granted that in exchange for his fare, the bus driver will allow him to ride on the bus.

Example

Jones went into a restaurant and ordered a meal from the menu the waitress gave him. He did not tell her he would pay for it and she did not ask him about payment. It was taken for granted that in exchange for the meal, Jones would pay the amount stated on the bill the waitress gave him. This is an implied contract.

Written Contracts

A written contract may be printed, typewritten, or in longhand, or partly in each. It may be formal and included in a legal document or it may be written on a plain sheet of paper, or contained in a letter.

No particular form is necessary. All that is required is that it show the names of the parties, the subject matter of the contract, the terms of the contract, and the price or consideration each party is to pay. If what is written does not make a complete contract, there is no contract. When individuals have put what they are agreeing to in writing, or have agreed to a written contract, and signed their name to it, they are bound by the written words. Usually no part of a written contract can be changed by oral words. They cannot change a written contract later by saying that they meant to agree to something else.

Even though it may not always be necessary to put contracts in writing, it is usually desirable to do so where anything of value is concerned. The parties are likely to consider all the terms more carefully if they are put in writing. It prevents honest misunderstandings. There can be no argument later on as to the terms or how the parties understood them. If it should become necessary to take the case to court, it is much easier to prove the case with a written agreement.

Writing simple contracts may at times prevent inconvenience and loss. An oral contract depends on the memories of the parties to it. If one party dies it is virtually impossible to prove an oral contract. If a contract is really important, therefore, it should be put in writing.

Contracts which are required by law to be in writing will not be enforced by the courts unless they are in writing.

To be legally recognized as evidence that a contract is in writing, the note or memorandum must contain the names of the parties and the subject of the contract.

A simple written contract might be similar to the following agreement.

Calgary, Alberta
May 1, 1988

I agree to clean and paint the outside surface of the frame building which is used as a grocery store, belonging to Henry Rankin at Blank Avenue, Calgary, using paint and materials supplied by Henry Rankin and applying one coat of paint. This cleaning and painting is to be completed on or before September 1, 1988.

Payment for this work is to be $500 and is to be made in full when the work is completed.

Signed
R. Carter

Accepted
H. Rankin

THE ESSENTIALS OF A VALID CONTRACT

Definitions

Valid means legal or lawful. A valid contract is a binding contract which the law will enforce.

A void contract is one which has no legal effect. This means that in law it was never formed at all. There is no contract which the court will enforce, and it bestows no rights on either party.

A voidable contract is one which can be cancelled, usually at the option or choice of one of the parties to the contract. For example, minors may contract with a competent adult to rent a boat. The minors are not legally bound by such a contract, yet if they are willing to perform their part of the contract, the competent adult is bound by it. The minors can set aside the contract or not as they wish, but the adult has no choice to set it aside.

A voidable contract may also be declared void or legal at the option of either party by agreement. For example, if A is employed by B subject to a week's notice on either side, and B gives a week's notice, the contract comes to an end when the week's notice expires. Or perhaps A is offered a better paying job. A could give B a week's notice and the contract would come to an end when the week expired.

An unenforceable contract is one which is valid but the court will not enforce it because of some technical defect. Such a contract may become enforceable in the future if the defect is corrected. For example, an agreement to pay a debt which is unenforceable because of lapse of time, may become enforceable by a written promise to pay the debt, or by part payment of the debt.

A writ is a legal document issued by a court. **A writ of execution** is a court order issued to enforce obedience to the orders of the court.

ELEMENTS OF A VALID CONTRACT

In order for a contract to be valid and enforceable by the courts, the following five conditions must be met. If any of these conditions is absent, it is not a contract.

1. There must be a valid offer and acceptance. The offer must be seriously intended. There must be an offer by one party and an acceptance of that offer by the other party. Both parties must be in agreement. The acceptance must correspond exactly with the offer.

2. Consideration must be present except in a written contract under seal. Consideration or payment is necessary in every oral contract and in every simple written contract not under seal.

3. The parties to the agreement must be legally competent. In Alberta any persons eighteen years of age and over, and able to understand what they are doing, may make a contract and be bound by it. Some persons are regarded as less than fully capable, and their ability to make contracts is restricted for their own protection. Among these are:

   (a) Minors. In Alberta a minor is any person under eighteen years of age. (A minor is also called an infant.)
   (b) Insane persons.
   (c) Intoxicated persons.

4. The consent of the parties making the agreement must be real and genuine. Any persons entering into a contract must do so voluntarily, that is, of their own free will. Each party must enter into the contract without any force or threat of force, or persuasion by the other party. Where consent has been obtained through mistake, misrepresentation, fraud, duress or undue influence, it is not considered genuine and the contract will not be enforced. There must also be a meeting of the minds. Both parties must be thinking about the same arrangement for their consent to be real and genuine.

5. The purpose of the agreement must be lawful. The courts will not enforce an illegal contract.

A **mistake** is a misunderstanding of the terms of the agreement so that both parties do not have the same terms in mind.

A **misrepresentation** is a wrong statement of material fact made with an honest belief in the truth and made without intention to deceive anyone.

Fraud is a false statement of material fact made with the intention of deceiving someone, and causing injury or loss to the person to whom it is made.

Duress is overcoming the will of a person by actual or threatened bodily harm.

Undue influence is overcoming the will of a person by using some sort of persuasion which the law regards as unfair by a person who is in a position of trust.

Caveat Emptor is an old Latin term meaning "Let the buyer beware." If persons have an opportunity to examine goods before buying them, and later discover some fault which they should have been able to discover while examining them, they cannot cancel the contract. The courts will not protect people from their own poor judgment.

Misrepresentation

A material fact is a fact which induces a contract. Misrepresentation is a false statement of material fact.

Innocent Misrepresentation

If a person makes a false statement of material fact without intention to deceive and in the honest belief that it is true, the misrepresentation is said to be innocent. In the case of innocent misrepresentation the contract is voidable by the injured party.

Fraudulent Misrepresentation

Fraudulent misrepresentation, commonly called "fraud" is an offence where a false statement is made, either deliberately or with a reckless disregard of the truth with the intention of deceiving some innocent person for gain.

To succeed in a charge of fraud, all of the following conditions must be met:

1. There must have been a false statement of material fact. It must have misled the other party, causing the party to act on it.

2. It must have been made with the intention of deceiving the other party. It must have been made with complete disregard of the truth, that is, made knowing it was not true, or without knowing whether it was true or false.

3. The party charging fraud must have suffered loss because of the false statement.

Example 1

A goes into a store to buy a watch. B, the owner, shows him a watch and offers it to him for $75. B makes three statements:

(a) "This is a better watch than the one the jeweller next door has in his window today."
(b) "This is the best watch on the market today at this price."
(c) "I paid $75 for this watch." (In truth he had paid $10 for it.)

All of these statements are false, but (a) and (b) could not be the basis of fraud. They are not statements of material fact. They are B's opinions only. A statement of opinion does not constitute fraud and it affords no remedy for any person who is persuaded by it. Statement (b) is what is known as "puffing" or "seller's talk." Puffing is just an exaggerated claim. The public is aware of such sales talk and, generally, makes allowance for it.

Statement (c) is a statement of material fact. B either did or did not pay $75 for the watch. If A believed B had paid $75 for it and bought it thinking he was getting a very good watch, and later discovered it was a cheap watch, B would be guilty of fraud. Statement (c) meets all of the conditions listed above. It furnishes all of the points required to establish fraud.

Example 2

White goes to Black, a used car dealer, to buy a car. Black shows him a car which he is anxious to sell. In trying to persuade White to buy this particular car, Black says, among other things:

(a) "The selling price of used cars will double within the next year."
(b) "This is the best make of car ever built."
(c) "This car was owned by Gray who sold it to us; he used it very little because he was ill and has now gone to Victoria to live." (Actually Gray had never owned the car and Black knew that Gray had never owned it.)

As in Example 1, all of these statements are false. Statements (a) and (b) are the dealer's opinion only, and an expression of opinion, even if it is unfounded, it is not a condition for determining fraud. Statement (c), however, is not a matter of opinion; it is a statement of material fact. The car either did or did not belong to Gray in the past, and this car never had belonged to Gray. This was a deliberate misrepresentation of material fact made to induce the sale. If, because of this statement White bought the car, Black would be guilty of fraud because Statement (c) meets all of the conditions necessary to prove fraud.

White bought the car because he knew Gray, and thought it would be a very good car. He found out later that Gray had never owned the car, and that it was in very poor condition. It had stalled on the highway many kilometers from home, causing him considerable expense in having it towed back, as well as inconvenience and loss of time. Black was guilty of fraud. Because of this, White would be entitled to return the car and get back the money he had paid for it. White would also be entitled to damages and payment for loss of time and expense in connection with the car.

Defrauded persons may repudiate a contract (have it set aside by the court), and, because fraud is a civil wrong, they may sue the party guilty of deceit for damages as well.

The state treats fraud as a matter of public concern. Therefore, it is a criminal offence as well as a civil offence. Because it is also a criminal offence, persons guilty of fraud may find themselves in trouble with the law. They could be liable to a fine or a prison sentence.

Persons who have parted with their money or property because of fraud are entitled to the return of their money or property, but they are not permitted to shield the offender by an agreement not to prosecute, or to drop a prosecution already begun. For example, if Black offered to give White back his money and $50 extra if he would drop the fraud charges, the law would not allow White to do this.

Fraud is covered by a statute which sets out what is forbidden by law and the punishments which the courts may impose upon persons guilty of this offence. If a case is considered sufficiently serious it can be brought within the provisions of the Criminal Code which has a section dealing with fraudulent transactions relating to contracts and trade. This includes fraud, falsification of books and documents, impersonation, and forgery of trademarks and trade descriptions.

OFFER AND ACCEPTANCE

Lapse means to terminate or come to an end.

The offeror is the person who makes the offer.

The offeree is the person to whom the offer is made.

Contracts are usually arrived at by means of an offer and acceptance. An offer is a definite statement by one party (the offeror) of the terms under which he/she will contract. An acceptance is the agreement of the other party (the offeree) to the proposal stated.

The offer and acceptance may be made orally face to face, by telephone, by an exchange of letters or telegrams, by a formally written agreement, or by a combination of these methods. The important thing is that the parties understand each other.

In order to be valid the offer and acceptance must comply with the following rules:

1. The offer must be definite and seriously intended.
2. In simple contracts both the offer and the acceptance must be communicated by one party to the other party by a written or an oral statement, or implied by conduct.
3. An offer may lapse or come to an end and can no longer be accepted if:

   (a) either the offeror or the offeree dies before acceptance, or
   (b) the offer is not accepted within the time specified or, when no time is specified, a reasonable time.

4. The offer must be accepted in the manner stipulated or indicated in the offer.

5. The acceptance must be unconditional; if otherwise, the acceptance must be treated as a counter-offer which requires acceptance itself to make a contract. A refusal causes the offer to terminate, and it cannot thereafter be accepted unless the offer is repeated.

6. An offer may be withdrawn any time before it is accepted.

Generally the agreement is between one person and another person, or between one person and a company. Usually one person will make an offer to another person to give something or to do something, asking the other person to give something or do something in return. The first person is making the offer to the second person. If the second person accepted the offer, then there is a contract between these two parties.

An offer must be clear, definite, and certain. It must set forth all the terms of the agreement, such as who, what, when, where, and how much. It must be made known to the other party. The acceptance must be unconditional. It must correspond exactly with the offer. The offer is completely within the control of the offeror (the person making the offer). The offeror may decide the terms to be offered and the party to whom these terms are to be offered.

Although a contract originates in offer and acceptance, these need not be expressed in written or spoken words.

Example

A bus goes along the street. This is an offer on the part of the transportation company to carry passengers at a set rate. The offer is accepted when a person gets on the bus with the intention of becoming a passenger. In this case a legal obligation is created without it being necessary for any words to be spoken. Such a contract is said to be implied by the conduct of the parties.

It is important that the parties understand each other. Both parties must have in mind the same agreement. To be in agreement both parties must agree on what each is going to give and what each is going to receive. The transportation company expects to receive a fare and the passenger expects to get a ride. Both agree to this.

Example

A offers B $50 to repair his fence. B accepts. A believes he is going to give up $50 and in return he will get his fence fixed. B believes he will give up time and effort and in return he will receive $50. They both have in mind the same arrangement. There is a contract.

Example

A has two horses in his corral, a black one and a grey one. A points and says "I'll give you $400 for that horse. I can pay you now." B says "Sold!" and goes over to the black horse. But A means the grey horse which B does not wish to sell. There is no agreement or meeting of the minds here. They were not thinking about the same horse. There is no contract.

In order to have mutual assent in a contract, the party to whom the offer is made must respond faithfully to the conditions of the offer. The offeree must agree to do exactly what the offeror has proposed. In other words, both parties must concur with all the essential terms before a contract is recognized by the law. Only the expressed intent, or outward manifestations, of the parties is relevant; the secret intent of the contract is immaterial. The law looks only at the contract's explicit terms, not at the parties' interests. Individuals cannot later rely on unexpressed intent to negate or alter a contract. They cannot claim that they made the contract as a bluff or joke, or that there were conditions which they thought were in the contract. The assent must be present and not contingent on a future agreement. That is, a contract cannot be made to make an agreement in the future.

An offer cannot be accepted by the offeree until the offeree has first learned of it. This is not the trite proposition it appears to be at first glance. A person may find and return a lost article to its owner and afterwards learn that a reward has been offered for the return of the article. The finder is not entitled to the reward because the finder did not act in response to the offer of it. The offer must have been communicated before it can be accepted.

Crossed offers provide a further illustration of this rule. If A writes to B offering to sell his car for $2,000 and B meanwhile has written a letter to A crossing A's letter in the mail, offering to buy A's car for $2,000, there is not contract. B was unaware of A's offer when he wrote, and accordingly B's letter could not be an acceptance. Unless either A or B sends a subsequent acceptance no contract will be formed.

Similarly, we cannot be obligated by people who do work for us without our knowledge. We are entitled first to receive an offer to do the work, which we may then accept or reject. Persons for whom work has been done without their request, and without their knowledge, may well benefit from it; but as they have not accepted any offer to do the work, they have no contractual obligation to pay for it. In one such case, the facts were that Taylor had been engaged to command Laird's ship and that during the course of a voyage he gave up his command of the ship but helped to work the vessel home in another capacity. Laird refused to pay Taylor for these services. The court held that Laird was within his rights because he was not given the option of accepting or rejecting them.

Very often offerors who deal with the general public present the terms of their offers in written documents handed to the offerees, or they post notices containing them on their business premises. Sometimes both methods are used together, the delivered document referring to the terms posted in the notice. Common examples of such documents are tickets for theatres, railways, and airlines, receipts for dry cleaning, fur storage, watch repairs, etc., as well as insurance policies. Almost without exception a person receiving any one of these documents is not asked to read or approve of its terms. In fact, the offeree cannot change any terms of such a standard form contract — no real element of bargaining is involved. The person must accept the offer as it is or not at all. Often — as in a contract with a railway when there is only one practical means of transportation between two points — the offerees do not even have the choice of refusing. They must accept if they are to make the journey.

In these circumstances offerors have the tempting opportunity to disregard the interests of potential offerees, and to give themselves every advantage; they rarely resist. The public has two means of protection. First, if the business carried on by the offeror falls within one of the classes of business regulated by government boards or commissions, the terms of these documents will be subject to their approval. When these boards operate effectively, the public is usually well protected, and unreasonable terms are excluded. Second, in the vast range of unregulated activity the public receives whatever protection the courts can provide from the general law of contract. This protection is somewhat inadequate, but unless we are to allow government regulation of every aspect of business activity, no other means is readily available. What protection then, does the court provide?

As a starting point the law presumes that an unqualified acceptance of an offer is an acceptance of every term of that offer. Suppose, however, that the offeree in fact does not know that the offer contains certain terms. In one such case the contract was for the storage of a suitcase in a cloakroom of a railway station for a fee. A traveller deposited his bag and received from the attendant a ticket on the face of which were written the words "See back." On the reverse side of the ticket was a printed condition that the railway should not be liable for loss in excess of $50.00. The bag was lost and the traveller sued the railway for the value of its contents, $120.00. The traveller lost his case.

The fact that the ticket contained on its face the words "See back" is important. If a ticket or other document given to the customer at the time of purchase contains a short and clear reference to other terms appearing either on the reverse side, or posted on a near-by wall in the form of a notice or sign, there is much greater likelihood that "reasonably sufficient notice" of those additional terms has been given. Thus a sign in a parking lot in which the operator disclaims liability for loss or damage to car or contents may not in itself be reasonably sufficient notice to be binding on the owners of cars who park their vehicles there. We have to ask whether the ticket or voucher which patrons receive when they park their cars contains a clear reference to the sign and whether in the circumstances each customer ought to recognize the term stated on the sign as part of the contract they are making with the operator of the lot. A printed ticket or receipt which contains the words "subject to the conditions as exhibited on the premises" may serve to tie the sign in with each contract. The sign must, of course, be displayed prominently, but this in itself may not be sufficient; it must be brought home to the customer at the time of the contract. Operators of parking lots, garages, or other places of storage cannot assume that they may exempt themselves from liability merely by putting up a sign. The courts have summed up the law on this subject as follows:

People who rely on a contract to exempt themselves from their common law liability must prove that contract strictly. Not only must the terms of the contract be clearly proved, but also the intention to create legal relations -- the intention to be legally bound -- must be clearly proved. The best way of proving it is by a written document signed by the parties to be bound. Another way is by handing them, before or at the time of the contract, a written notice specifying certain terms and making it clear to them that the contract is in those terms. A prominent public notice which is plain for the public to see when they make the contract would, no doubt, have the same effect, but nothing short of one of these three ways will suffice.

An insurance policy is another example of a standard form contract. Usually a purchaser of insurance will be presumed to have notice of all the terms contained in the policy. Too often persons who have purchased protection under health, accident, automobile, or other types of insurance contracts assume that they are completely covered. When a loss occurs, they may be disillusioned to discover that the policy contains a term exempting the insurer from liability for loss under those very circumstances. Nevertheless, the insurance contract as written will be binding and the insurance company will not be liable.

The problem of reasonably sufficient notice arises only when the customer has not signed the document which contains the terms exempting the seller from liability. If the purchaser signs the document, he/she cannot claim insufficient notice. One can only hope to avoid the whole contract, and it is exceedingly difficult to do this.

Newspaper Advertisements

In the absence of special circumstances, an ordinary newspaper advertisement is not an offer, but only a proposal to negotiate, or a request to the potential customer to make an offer for the advertised goods. However, if the advertisement uses words of promise which are meant to have a binding effect upon the advertiser, an offer results. For example "We will give $10 to anyone who uses our hair tonic and has not turned blonde within 30 days." This is an offer which can be accepted by the reader.

The same rules that are applicable to advertisements in newspapers and magazines can be applied to prices and advertisements in catalogues. If the catalogue advertisements are accompanied by words stating that quantities of goods are limited and prices subject to change without notice, the advertisements may be taken merely as requests to make offers or to negotiate, not offers to make a contract. Therefore, they cannot bind the advertiser.

Example

B, who had a men's clothing store, put the following advertisement in the Edmonton Journal, "Shoes on sale at $19.98." A walked into the store and said, "I accept your offer."

It was held that B did not have to sell the shoes for $19.98. Actually B had agreed to do nothing. The advertisement was not sufficiently certain and definite to be an offer. Rather it was merely an invitation to the buying public to come in, look at the shoes, and make an offer.

Social Engagements

Social engagements are not enforceable at law.

Example

Bridges accepted an invitation to Crawford's house for dinner. Unfortunately, when the time came, Bridges decided to go to a hockey game instead. Crawford was disappointed but there was nothing he could do except perhaps not invite Bridges again.

Such an agreement is known as a social engagement. Bridges and Crawford did not intend to create legal obligations. From a moral standpoint persons should live up to their social agreements, but the law cannot compel them to do so.

Counter-offers

A counter-offer is a proposal by the offeree, the person receiving the original offer. For example, if Farmer Jones offers to sell to a merchant his crop of apples for one thousand dollars, and the merchant responds by saying that he will take the crop for nine hundred dollars, the merchant's response amounts to a counter-offer. The counter-offer is not an acceptance, but is deemed another offer which the original offeror in turn may accept.

When Farmer Jones, in this illustration, tells the merchant that he accepts the proposal of nine hundred dollars, then a valid contract is formed. The counter-offer acts as a rejection of the original offer.

The counter-offer must be distinguished from negotiation or inquiry. If the merchant had said to Farmer Jones that he would like to buy the apples if Farmer Jones would lower his price, or that he would like to discuss other terms, the offer would still remain open, because the merchant's response was merely an inquiry. It does not act as a counter-proposa, but only indicates the merchant's desire to pursue negotiations. A mere inquiry by the offeree regarding the offeror's willingness to change the terms of the offer, or willingness to negotiate any terms, will not be considered a counter-offer and, thus, will not be a rejection either.

Acceptance upon certain conditions, e.g., that the offeror do something additional, will not act as an acceptance but rather as a counter-offer. For instance, in the last illustration, had the merchant stated that he would take Farmer Jones' apples at one thousand dollars if Jones would give him a free carload of corn, this statement would be viewed as a counter-offer.

Forms of Acceptance

An acceptance must conform to the conditions and requests of the offer. The person receiving the offer may not change terms or conditions which are contained in the offer. If he/she does, the reply is not an acceptance. If, however, additional terms such as delivery, manner and place of shipment, are added by the offeree, they usually do not negate the accepted contract. Unless they are of the very essence of the offer, such as subject matter or price, they remain at the offeror's option to accept. Nevertheless, the new terms do not become part of the contract unless they are explicitly approved by the offeror.

It must be noted that a person's conduct may happen to comply with the mode of acceptance as set out in an offer and yet not constitute an acceptance. The offeree may habitually perform the act requested in the offer: a person need not abandon normal conduct to avoid accepting the offer. Suppose Smith always walks his dog around the park each evening, and Jones stipulates that Smith will have accepted Jones' offer to sell his car for $2,000 if Smith walks his dog in the park the next evening. Smith need not give up his normal habit the next evening to avoid having the contract forced upon him. For the same reason an offeror cannot stipulate silence as a mode of acceptance, thus forcing the offeree to act in order to reject the offer. Silence can only be a sufficient mode of acceptance if the parties have habitually used this method to communicate assent in previous transactions, or have agreed between themselves silence shall be sufficient.

To illustrate the above point, assume a publisher sends the following letter to prospective purchasers: "We hereby offer you our Complete Works of Joe Blow (all one hundred and twelve volumes in gold embossed hard covers) at the amazingly low introductory price of $2,800. If we do not hear from you within ten days, we shall assume you have accepted this remarkable offer, and we will forward these books to you at once, postpaid."

There will be no contract even if the offerees do not reply and the books are delivered, but they may well be bound if they take the risk of reading them after they arrive.

An example of a case where silence may be considered to be an acceptance would be an insurance company who has sent an offer to renew an already existing policy. If the renewal offer is not returned with some notice of cancellation, it is presumed that the insured's silence constitutes an acceptance.

For an acceptance to become binding on the offeror, it must be made either in a manner which the offeror expressly demanded, or in a manner in which it was expected to be made in accordance with the following rules:

1. An offeree can accept the offer by making immediate performance in accordance with the offeror's proposition. For example, if a customer in a store takes an article from the shelf and asks the clerk, "Is it all right if I take this now and you can put it on my charge account?" the clerk will have accepted this offer by the act of wrapping the article and handing it to the customer.

2. Where the offeree cannot immediately supply the goods or perform the services asked by the offeror, it will be necessary for the offeree to communicate acceptance to the offeror by words, gestures, actions, or writing. Where the parties are negotiating a deal orally, it is obvious that acceptance of an oral offer can be communicated orally or by clear gestures, such as nod of the head, a handshake, or the fall of an auctioneer's hammer.

3. If the offeror has issued instructions regarding the manner in which acceptance is to be made, the offeree must observe these instructions exactly; otherwise no binding agreement comes into existence. If the offeree makes an improper acceptance, it serves only as a counter-offer, which the original offeror may accept or ignore. The agreement is complete when the instructions for acceptance have been carried out, such as when the letter is dropped in the mailbox. Any specified time limits must be adhered to; if none have been specified, then the acceptance must occur within a reasonable time.

SPECIALTY CONTRACTS OR CONTRACTS UNDER SEAL

A contract under seal is a special type of written contract which is signed, sealed and delivered by the party or parties concerned. This is to show that the parties to the agreement have entered into a solemn obligation to perform the terms of a contract whether or not they receive any benefit from it. The seal in this case is a private seal attached to the written agreement by one or both of the parties.

A specialty contract is sometimes called a formal contract or a deed.

The use of the seal goes back into history. Long ago the average man could not read or write. If he made an important contract he would have someone else write it out for him. To show that he agreed to the contract he would put some melted wax on the paper or on whatever substance the contract was written on; then he would press his own private seal in the wax. In this way he could identify a contract to which he had agreed. In the early courts contracts bearing such seals were the only contracts that could be enforced.

Today seals are no longer wax impressions of a man's crest or coat of arms but are usually red adhesive wafers or stickers superimposed or placed on the top of the document. They are usually affixed to the document beforehand and the signature of the party is written to the left of the seal. Generally, such contracts must be signed in the presence of a witness or witnesses.

A contract under seal, or deed, takes effect from the date of delivery. The deed is delivered either by actually handing it to the other party, or to someone else for the benefit of the other party, or by words indicating a present intention that the deed should be in force though it is retained in the possession of the party executing it.

A contract under seal does not require consideration in order to be enforceable, as the formality of the contract, complete with seal, shows that care and thought have been taken in entering into the agreement. If people go to the trouble of putting the contract in writing, signing it, and sealing it, then courts do not find consideration to be necessary.

If a document ends with "SIGNED, SEALED AND DELIVERED in the presence of" a seal or seals, as required, should be affixed in the space(s) provided or the document may not be accepted by the court.

These formal contracts of business are only required for certain classes of contracts today. These include gifts and contracts concerning land or land and buildings on the land.

A person who has been promised something without any consideration, that is, a gift, can enforce such a promise only if it was made in the form of a contract under seal.

"Conveyances" is the name for documents which transfer land from one person to another. A conveyance is used not only to transfer ownership, but also other interests in land, such as a mortgage on the land, or a lease for longer than three years. All contracts having to do with land are required by statute to be in the form of a document under seal in order to be legal and enforceable.

Other contracts, in order that the occasion of making them may be made more impressive, or for other reasons, are sometimes made under seal in circumstances in which it is not legally necessary to use that form.

Other Seals

A limited company is required by law to have a corporate seal, and with certain exceptions this seal must be placed upon any contract it makes. The purpose of this is to show the consent of its members to the contract. Contracts of minor importance, however, such as the hiring of clerical employees, making small repairs, or purchasing office supplies, do not need the corporate seal.

Other seals of authority, besides the corporate seal, are the seal of a public official, or a seal attached by a Commissioner of Oaths (an official who certifies that the person signing a document is the person he claims to be).

FORM OF CONTRACTS

Contracts may begin in two ways:

1. Individuals may draft a contract themselves in which case they must be sure that it contains all the terms which they wish each party to observe.

2. It may be drawn up by the other party in which case a person should check carefully to make sure that it contains no objectionable terms.

Once a person has entered into a legal agreement he/she cannot disregard its provisions without committing a breach of contract.

Written Contracts

The law requires that certain classes of contracts must be in writing to be enforceable. Other contracts may be oral, or written, or implied by the conduct of the parties. However, where anything of value is concerned, it is advisable to have a written contract. It should be made out in duplicate so that each party will have a copy. In a written contract a person should put all the details in writing. If the other party plans to keep such promises there should be no objection to putting them in writing.

A person should be sure to read carefully and understand an agreement before signing it; and should refuse to sign an agreement where blank spaces are to be filled in later.

The law provides that a written contract must be signed by the party to be sued or by an authorized agent. Since either party might have occasion to take action against the other, it is wise to have both parties sign both copies of the written agreement, and each keep a copy. Then if either party commits a breach of contract, the other party could take the matter to court.

Errors in Judgment

The law does not protect people from errors in judgment. Poor judgment in making an agreement is not a reason for setting aside a contract.

Example

A offered to sell some furniture for $1500. B accepted and made a down payment of $200. Later B decided the furniture was worth only $1000 and asked A to change his original price. A insisted on the original price of $1500. The court ruled that B must abide by the original contract and pay A the $1500.

The Statute of Frauds

Definitions

Fraud is deliberately misrepresenting a fact in order to cheat another person or gain some unfair advantage over that person.

Perjury is making a false statement under oath which the person making it knows to be false and which relates to the case before the court. Because so much depends on the sworn oral evidence of witnesses in court, perjury is considered to be a very serious offence.

For centuries under English common law there was no difference between an oral contract and a written contract. However, in 1677, because of the ending of the civil war and the restoration of the monarchy, there was much confusion and fraud in England about the ownership and the transfer of ownership of land. In order to eliminate fraud and perjury concerning this, and the enforcing of old claims, Parliament passed an act called the Statute of Frauds.

The Statute of Frauds was adopted in most common law countries, including Canada.

In Alberta, the Statute of Frauds requires that the following classes of contracts must be in writing to be enforced by the courts.

1. Any promise by an executor or administrator of an estate to answer damages out of his own pocket. He may discover that a debt owing by the deceased is due at a time when it is not convenient to pay it out of the assets of the estate. Perhaps some property must be sold. The executor or administrator may promise to pay the debt personally, intending to make a claim for it from the estate later. The creditor will not be able to enforce this promise unless it has been put in writing and signed by the person who promised payment.

2. A promise to pay for the debt, default or miscarriage of another person. The courts have held that this part of the Statute applies only to guarantees. A guarantee is a promise to pay only if the debtor defaults.

3. Any agreement in consideration of marriage, except a mutual promise to marry. This is a promise to do something or to pay something if a certain marriage takes place; for example, "I will give you my car if you marry my daughter." Mutual promises to marry are not within this Statute because the consideration for each promise is the promise of the other.

4. Contracts for the sale of land or any interest in land. This covers agreements concerning sales of land, long-term leases, or real estate mortgages.

5. Any agreement not to be performed within one year from the making thereof. It is not considered advisable to trust to memory the terms of a contract which would be performed over a long period of time.

6. An agreement to pay a commission to a real estate agent must be in writing to be enforced by the courts.

The Effect of Part Performance

There are times when the Statute of Frauds does not apply. This refers to contracts which ordinarily should be in writing but have been made orally and partly performed. If the plaintiff has gone ahead and started to fulfill the terms of the contract with the defendant's knowledge and consent, and then the defendant has a change of mind and retracts part of the agreement, the law can make the defendant carry out the contract. There are times when the Statute of Frauds has a tendency to encourage rather than to prevent dishonest dealings because one party may know about the written requirement and the other party may not. It is for this reason that the Effect of Part Performance was introduced.

Example

Lawson, a building contractor, orally agreed to sell Carrier a city lot and to build a house for him on it according to plans submitted by Carrier. Lawson started building the house and from time to time Carrier came around to inspect the work. He told Lawson he was pleased with the way the house was coming along. Later Carrier changed his mind and refused to carry out his part of the contract claiming that since it was an oral contract for the sale of an interest in land, it was not enforceable. Lawson took the matter to court. The court held that since there had been part performance by the plaintiff (Lawson) with the knowledge and consent of the defendant (Carrier), the contract was enforceable.

Consideration

Consideration is that which a person receives or is to receive for what he/she does, or promises to do, when entering into a contract. It must be of some value in the eyes of the law. It must be money or something with a money value.

The basis of the idea of a contract is the concept of a bargain. The parties who want something from one another discuss the terms until they reach an agreement about what each is to give and what each is to receive. In doing this they are sometimes said to be "bargaining." Each party wants a benefit; such as a promise to pay money, or to deliver goods, or to supply services. Each party must pay a price, that is, give up something for the benefit received from the other party. This price is called consideration.

All simple contracts, whether oral contracts or written contracts not under seal, need consideration to be effective. It may be an exchange of goods for other goods, in which case the consideration each party receives for entering into the contract is *goods*. It may be an exchange of money for goods and the consideration one party receives for entering into the contract will be goods, and the consideration for other party receives for entering into the contract will be *money*. Or it may be an exchange of money for *services*, such as when a client goes to a lawyer for legal advice. It may also be an exchange of money, or the promise of money, for a promise not to do something, as, for example, a father promises to give his son a thousand dollars on his eighteenth birthday if he refrains from smoking until then.

If a person promises to do something for another person, the courts will not enforce this promise unless the person receives something, or is promised something in exchange. Therefore persons who wish to enforce a contract must be able to show that they have furnished consideration for the promise of the other person. They must have done something, or promised to do something, or promised to refrain from doing something in exchange.

The only exception to this is a **contract under seal**. If a person goes to the trouble of putting an agreement in writing, signing it, and sealing it, it is felt that there was good reason for making the contract and consideration is not necessary in order for the court to enforce it.

Example

A offers to sell his boat to B for $500. B agrees, takes out his wallet and pays A $500. This is a contract.

A — (boat) B
A — ($500) B

The benefit to A is the receipt of $500 in cash. The benefit to B is that he receives the boat. A gives up the boat; B gives up $500 in cash.

The $500 A gets is consideration or payment for giving up the boat. The boat B gets is consideration or payment for giving up the $500.

When they started out A had the boat and B had the $500. When they finished B had the boat and A had the $500. There had been an exchange of values or an exchange of consideration.

Adequacy of Consideration

In developing the concept of consideration, the courts have insisted that the consideration must always have some value in the eyes of the law; but they have refused to concern themselves with whether the promisor has made a good bargain. They have taken the view that it is not for them to make a bargain for the parties, and if individuals request a totally inadequate consideration for their promise, that is their own fault. To assess the adequacy of consideration requires a personal value judgment; and the courts would have to relinquish their role of impartial arbiter if they were to concern themselves with adequacy.

This is not to say that a court will never be interested in the nature of the consideration. If, for example, the consideration is grossly inadequate for the promise and if other evidence points to fraud, duress, or undue influence exerted on the promisor, the court may hold that the promise is voidable.

Present and Future Considerations

Present consideration occurs when the parties perform their part of the contract at the time it is made.

Example

A loses his watch and advertises that he will pay a reward of ten dollars for the return of the watch. B finds the watch, sees the advertisement and returns it to A. A pays B the reward at the time the watch is returned.

Future consideration occurs when both parties to the contract promise to do something in the future.

Example

A promises to build a fence for B. B promises to pay A five hundred dollars when the fence is completed.

In this case both A and B promise to do something at a future time. This is a simple contract and would be enforceable when the fence is built.

Past Consideration

A promise to do something in return for past benefits already received is said to be given for "past consideration" and is not legally enforceable. Past consideration is said to be no consideration at all.

Example

A's car goes through the ice. B helps A get it out. After they get the car out, A tells B he will give him twenty dollars for helping him. Later A refuses to give B the money. There is no contract and B cannot collect. B did not give his help in exchange for A's promise to pay the twenty dollars.

A's promise to do something because of past benefits received is not sufficient consideration as it gives no benefit to the promisor (A) and is no disadvantage to the promisee (B). The promise is made after and independent of the act. It is merely a motive springing from feelings of gratitude. A promise given for past consideration is gratuitous and not enforceable.

Gifts Without Consideration

A promise made without consideration is a gift. A promise made for consideration is a bargain. If there is no consideration the promise is said to be gratuitous, and, unless it is made under seal, it is not enforceable.

Gratuitous Promises

It should be noted that if a person makes a gratuitous promise, that is, promises to do something for nothing, such as to repair a car, the promissor cannot be compelled to carry out this promise. However, if the promissor actually does the work and does it negligently, the promissor is liable for any loss caused by this negligence.

Example

Fred offered to fix the brakes on Steve's car free of charge. He fixed the brakes but did not do the job properly, with the result that when Steve stopped his car at a red light the brakes failed and Steve's car slid into another car causing considerable damage. Steve had to pay for the damage to the other car. Fred had to pay damages to Steve because he had not done the job properly.

Charitable Donations

Pledges or promises to give money to charitable causes are usually subscribed for some specific purpose such as a building fund. Sometimes the fact that a prominent citizen has pledged a certain amount will persuade other persons to commit themselves in a similar way. Perhaps work has been started on the basis of these pledges.

The courts will generally enforce such pledges on the grounds that consideration lies in the fact that charitable organizations are a benefit to the community and that is enough to satisfy the law. It is not necessary that the subscriber benefit directly at all.

Contracts of Guarantee or Suretyship

A contract of guarantee or suretyship is a contract whereby one person guarantees that he/she will be responsible for another person's debt or default if the other person does not pay.

There ar generally two parties to a contract, but there are three parties to a contract of guarantee: (1) the creditor who is sometimes called the principal creditor; (2) the debtor who is sometimes called the principal debtor; and (3) the guarantor or surety who is the third party and who guarantees payment.

Example

A, who has recently been transferred to another town needs a refrigerator but does not have the money to pay for it. B, who knows C, the manager of the store, tells C to let A have the refrigerator and if A does not pay for it at the end of the month, B will. A is the principal debtor because he got the refrigerator and is supposed to pay for it at the end of the month. C is the principal creditor because he gave up the refrigerator and is to receive payment at the end of the month. B is the guarantor or surety; he must pay only if A does not pay.

It would not be a contract of guarantee if B says to C, "Let A have the refrigerator and charge it to me." It would be a simple contract between B and C. C gives up the refrigerator and B is to pay for it. There is no suggestion that anyone else will pay. Such an agreement would be a **contract of indemnity**.

A contract of guarantee must be in writing and signed by the person guaranteeing payment if it is to be enforced by the courts.

Sometimes where a large sum of money is involved, one guarantor is not sufficient. Several are required and all guarantee the same debt. Each is called a "co-guarantor" or a "co-surety."

Rights of the Guarantor or Surety

The guarantor has certain rights: (1) against the debtor; (2) against the creditor; and (3) against the co-guarantors or co-sureties who are the other parties who guarantee the debt.

After a guarantor has made any payment under the guarantee, the guarantor is entitled to rank as a creditor of the debtor. The amount paid may be recovered from the debtor by legal action if necessary. This is called the "right of indemnity."

A guarantor' duty to pay the debt arises as soon as the debtor defaults. However, the creditor generally makes a demand on the debtor first.

Sometimes, when guarantors give their guarantee, they may state in writing that they will not be liable unless the creditor first sues the debtor and fails to recover the money.

If the guarantor pays the debt he/she takes the place of the creditor and acquires all the creditor's rights. This transfer by which the guarantor succeeds to the creditor's rights is called "subrogation."

If, in a case where there are several guarantors, and one guarantor is called upon to pay the whole debt, this person is entitled to take legal action against the other co-guarantors to compel them to pay their share. This is called the right to "contribution" by the co-guarantors.

Discharge of Guarantee or Suretyship

A guarantor or surety is discharged from the obligations undertaken under any of the following circumstances:

1. If the creditor without the guarantor's consent voluntarily releases the debtor.

2. If the creditor without the guarantor's consent gives the debtor an extension of time for the payment of the debt.

3. If there is any material alteration or variation of the terms of the contract without the guarantor's consent.

4. If the creditor surrenders securities held to the guarantor, the guarantor is discharged to the extent of the value of the securities.

Legal Capacity to Make Binding Contracts

Some classes of persons are said to be "legally incompetent" and their liability in the matter of contracts is limited. The most outstanding group of such legally incompetent persons is minors or infants. Other classes of persons who are regarded as legally incompetent are insane persons and intoxicated persons.

It is considered that these persons need legal protection against the acts of persons who might take advantage of their inexperience or their mental condition. Generally, the courts will not enforce a contract against a legally incompetent person, but there are some exceptions to this general rule.

Minors (Infants)

The words "minor" and "infant" are used interchangeably. They both mean the same thing. In Alberta a minor is any person under the age of eighteen. This applies to persons entering into binding contracts, voting, standing for elected office, and observing other provincial laws.

Minors are allowed to make contracts, either oral contracts (spoken words only) or written contracts, but, with certain exceptions, they cannot be compelled by law to carry out these contracts. The law dealing with the responsibility of minors for the agreements they make may be considered by dividing the subject into four classes of contracts. These are:

1. Valid contracts
2. Void contracts
3. Voidable contracts
4. Obligation to pay for necessaries supplied.

1. Valid contracts. These are contracts for apprenticeship and employment which are for the minors benefit. This type of contract is no longer very common but is considered as binding at law. The courts can enforce such a contract. (A minor may sue for wages due - wages earned that have not been paid.)

2. Void contracts. These are contracts which are clearly prejudicial to minors, or contracts which would do them harm. Perhaps a minor has inherited a considerable sum of money and has agreed to invest it in something foolish and unnecessary. The courts would not enforce such a contract.

3. Voidable contracts. The majority of contracts entered into by minors fall into this class. These are contracts where minors have the choice of treating it as binding or not binding. They may either accept the contract or avoid it. A minor's avoidable contracts may be divided into two classes:

(a) Contracts which are binding on the minor unless he/she repudiates the contract while still a minor or within a reasonable time after reaching eighteen years of age. Such contracts are: (1) the acquiring of an interest in permanent property such as real estate, and (2) a contract involving continuous benefits as, for instance, where a minor becomes a tenant, a partner, or a shareholder. If the minor took no benefit under such a contract, the minor can recover any money paid.

(b) Contracts which are not binding unless ratified (confirmed or approved). This is a very large class for it includes the common types of contracts made by minors for the purchase of personal items which are not necessaries, and may be classed as luxuries and include such things as expensive clothing, expensive automobiles or automobiles which are not a necessity, and jewellery. The distinguishing feature of this type of contract is that the contract is still not binding upon the person after reaching the age of eighteen unless the minor confirms it in writing. No ratification made while still a minor is binding. In cases where the minor has received no benefit, the minor is able to recover money already paid. In cases where the minor has received some benefit, only some of the money paid may be recovered.

To "repudiate a contract" means to cancel a contract, or to refuse to carry out a contract. If minors wish to repudiate a contract they must declare to the other party either in spoken words (orally) or in writing, that they do not intend to carry out what they had promised to do under the agreement. If it concerns a written contract, or if anything of value is involved, it is advisable to put this intention in writing. It must be stated clearly that they are rejecting the contract so that there will be no misunderstanding about the matter.

4. Obligation to pay for necessaries supplied. These are goods and services which a minor needs to stay alive and secure. Necessaries include such things as room, board, clothing, medical and dental services, and education. In some cases where no public transportation is available a car might be considered a necessity. A certain number of items are held to be necessaries, and beyond this list each case must be decided on its own facts. Whether they are necessaries will depend upon where the minor is living and doing; that is, whether living at home or away from home, whether a student is working and self-supporting, whether the purchase was something actually needed, and whether the minor was not adequately supplied with the same or similar goods. These do not include luxuries.

   The contract of a minor for the supply of necessaries is valid and enforceable. However, regardless of the price agreed upon, the courts would not require the minor to pay more than a reasonable price.

   If a minor is living at home, it is the responsibility of the parents to pay their child's debts; that is, they are liable for them. The parents can avoid this liability if they give notice that they will not be responsible, but they would have to have good reasons for this. If the minor is living away from home and is self-supporting, and the parents pay directly to a creditor a part of the debts for necessaries, they are acknowledging their liability to pay all the debts. By doing this, they acknowledge that they will be responsible for any other similar contracts their child may enter into. If, however, instead of paying the money

directly to the creditor, the parents send money directly to the minor to pay any creditor, the money is not considered to be a part payment by the parents and they are not liable for other payments. This is true even if the parents intended the minor to use the money to pay debts.

If a person lends money to a minor for the purpose of buying necessaries, the minor may be required by law to pay back this money.

If there were no exceptions to the general rule that minors did not have to carry out their part of a contract, the result might be harmful to minors. Merchants might refuse to rely on any promises made by minors and they could suffer hardship as a result. Minors might require food and clothing in an emergency but be unable to find a merchant willing to sell them these things on credit. Also, there might be times when they would be unable to enter into contracts for apprenticeship or employment.

There is nothing to prevent minors from purchasing non-necessaries on credit if they can find a merchant who is prepared to rely entirely upon their promise for payment.

If minors enter into contracts and make false statements about their age, claiming that they are eighteen when they are not, and, if because of these false claims they cause loss or damage to anyone, they can be charged with fraud and sued for damages.

Example:

Ford who was seventeen years of age, bought a car from a dealer, fraudulently claiming that he had passed his eighteenth birthday. He took the car out and when turning a corner too fast, rolled it over, hit a pole and completely wrecked the car. He then tried to avoid the contract and get his money back on the grounds that he was a minor. The court ruled that he could avoid the contract, but he must pay for the damage to the car. The loss to the dealer was the direct result of Ford's fraudulent misrepresentation about his age, and he must make good the loss.

If minors make contracts for the purchase of goods and wishes to repudiate the contract, they may do so but they must return the goods.

Example

Payne, a minor, bought a second-hand motorcycle from Armstrong, a dealer, for $350. According to the agreement Payne was to pay $50 at the end of one month and then $25 a month until it was paid for. Before he made his first payment he decided it needed a new motor. He said the dealer had deceived him because he had said it was in good condition, and he refused to make the payments or to return the motorcycle. The court ruled that he could repudiate the contract and refuse to pay for the motorcycle, but he must return the motorcycle to the dealer.

If minors are sellers rather than buyers in contracts for the sale of goods and decide to repudiate, they cannot get back the goods unless they return to the buyers the money the buyers had paid them.

Example

Warren, a minor, sold his portable typewriter to Weston, an adult for $95 cash. A month later he decided he would repudiate the contract and get his typewriter back. He refused to return the $95 on the grounds that he was a minor. The court ruled that he could repudiate the contract and get his typewriter back, but he must return the $95 which Weston had paid him.

If minors have received benefits as a result of contracts made, though the goods are not necessities, they will not be able to recover money already paid for the benefits actually received. They will be able, however, to avoid paying the rest of the money agreed upon.

Example

Gordon, sixteen years of age, rented a typewriter from Gilbert for three months at ten dollars a month. He paid Gilbert the thirty dollars in advance. He kept the typewriter for two months and then returned it. He wanted to repudiate the contract and get back the thirty dollars. He thought he could do this because he was a minor. The court ruled that as he had had the use of the typewriter for two months, he was entitled to a rebate of only ten dollars.

Contracts for the purchase of non-necessaries are voidable at the minor's option. If money has been paid on a contract which was later declared void, the money must be paid back. It should be noted that minors' contracts are voidable for their protection only.

Example

Austin, an adult, persuaded Martin, a minor, to enter into a contract with him. The contract is binding on Austin unless Martin chooses to set it aside. Martin can set aside the contract or not as he wishes, but Austin has no choice in the matter.

A Minor's Freedom From Liability

A minor's freedom from liability is limited to contracts, that is, binding business agreements. The fact that a person is under eighteen is no defence where civil wrongs or criminal offences are concerned. *The law protects minors from their own inexperience, but it does not protect them from their own wrongdoing.*

Minors are liable the same as adults for torts such as negligence, assault, slander, libel, and deceit. They are liable for offences under the Highway Traffic Act the same as adults. They are liable for offences coming under the Criminal Code such as fraud, false pretenses, cashing bad cheques, theft, breaking and entering, possession of stolen goods unlawfully obtained, criminal negligence in the operation of motor vehicles, and manslaughter.

Insane Persons and Intoxicated Persons

Insane persons are sometimes referred to as "persons of unsound mind" or "mental incompetents."

In the matter of contracts, drunkenness is regarded as having the same effect as insanity.

As in the case of minors, persons of unsound mind or drunken persons are always liable for necessaries sold and delivered to them, and they are bound to pay a reasonable price for them. Any other contract is voidable at their option if it can be proved that they did not know what they were doing at the time they entered into the contract and the other party knew of this fact.

If it can be proved that the other party knew of their condition when they made the agreement, mentally incompetent persons on recovering their sanity, or someone appointed to act for them, or drunken persons when sober, can cancel the contract or complete it as they choose, but it is binding on the other party to the contract.

Drunkenness is a defence only against the possibility of entering into undesirable binding business agreements; it is no defence in other situations such as violations of driving regulations. Nor is it a defence where civil wrongs (torts) or criminal offences are concerned.

The Public Trustee

The Public Trustee Office, usually referred to as "The Public Trustee," is a provincial government agency made up of persons with legal training who look after the estates of minors, insane or mentally incompetent persons, missing persons and persons dying without leaving a valid will. The Public Trustee also looks after the estates of persons serving a term of imprisonment, or who for any other reason are unable to look after their own affairs.

The Public Trustee receives official notice concerning the estates of such persons, and in their interest and for their protection, takes charge of their estates until the persons concerned are capable of taking charge, or until the estate is settled. In the case of a minor, a good deal would depend upon whether the minor had a parent or parents living, or, if not, whether a guardian had been appointed to look after the minor's affairs.

THE LAW OF BAILMENTS

A Bailment

A *bailment* is the transfer of personal property to another person for a particular purpose with the understanding that at the end of a specified time or when the purpose is fulfilled the property will be returned to the owner. Examples of bailment are: borrowing a neighbor's lawn mower, leaving a car to be repaired at a garage, storing a fur coat with a furrier, leaving valuables in a safety deposit vault in a bank, and entrusting goods with a transportation company for shipment. In each case it is expected that the same article transferred will be returned to the owner.

A loan of money is not a bailment because the lender does not expect to get the same pieces of money returned. Title to the money is transferred to the borrower in exchange for a promise to return a like amount. Similarly, money deposited in a bank is not a bailment; the bank will return a similar amount to the depositor on demand.

The person who transfers property to someone else for a particular purpose with the expectation that it will be returned is called the "bailor." The person to whom the property is transferred is called the "bailee."

Any time personal property is in the possession of someone who is not the owner of the property a bailment exists. The title to the goods always remains with the rightful owner.

The *bailor* is generally the owner of the property.

The *bailee* is the person who is in charge of goods that belong to someone else. The bailee is sometimes called the "custodian" or "keeper." Bailees must use ordinary care in safeguarding goods that are in their possession. If they use such goods they are liable for damages even though they were not negligent in using them.

The law of bailments is a law which sets out the rights, duties, and obligations of the parties when one person has any personal property belongings to another person.

Rights and Duties of Bailors and Bailees

Both bailors (owners) and bailees (keepers) have certain rights and duties. The greater responsibility is usually on the bailees because they have someone else's property in their possession.

Bailments have been classified into several groups according to who is to receive a benefit from the transaction, the bailor, or the bailee, or both of them. The rights and duties differ for each group. A bailment for the benefit of only one of the parties, the bailor or the bailee, is called a "gratuitous bailment" because the person is receiving some favour or service free. A bailment for the benefit of both parties is called a "bailment for value or reward."

A hiring of work on personal property means the employment of a worker who undertakes to do something to it for a price. The owner of the personal property is the bailor, and the worker is the bailee. An example of this is a car left at a garage to be repaired by a mechanic.

The legal liability of the bailee depends upon the circumstances under which the goods are left in the bailee's care. The bailee must exercise the degree of care required by the class of bailment. The bailee must fulfill the terms of the agreement or be liable for loss or damage.

Individuals who are in the business of storing goods for pay are called "warehouse persons." Because they have someone else's goods in their possession, they are also bailees. Warehouse persons are liable for any damage caused by the negligence, fraud, or ill will of any of their employees, provided it is committed in the course of their employment and within the scope of their duties.

Most bailments that arise in business transactions are the result of a contract between the bailor and bailee and the general rules of contract apply. There must be offer, acceptance, and consideration; the parties must be competent to contract; consent must be genuine; and the object must be legal. Bailments arising out of ordinary personal relationships may or may not be contracts.

A contract of bailment is different from a contract of sale. It is sometimes important to determine whether or not there has been a bailment or a sale because the risk of loss generally rests on the owner. Besides this, in the event of a bankruptcy, the subject matter of a bailment cannot be seized and sold to pay the bailee's creditors because it is owned by the bailor.

Doing Work on Personal Property

The right to hold another person's goods until the owner pays a debt is called a "lien."

Workers have the right to hold goods upon which they do work until the service charges are paid. This right to hold the goods is called a lien on the goods. Workers lose that right if they give up possession of the goods, or if they agree to accept payment at a later date.

The Possessory Liens Act provides that "every person shall have a specific lien upon a chattel upon which he/she has expended money, labor, or skill at the request of the owner for the payment of the debt." The worker must keep the goods or chattels in his/her possession and if the account is not paid within a certain time the chattels may be sold at public auction. The owner is entitled to any surplus or is liable for any deficit resulting from the sale.

A Pledge or Pawn

Sometimes a bailment is connected with the loan of money. The goods are transferred to the lender as security for a debt. Such a bailment is called a "pledge." The owner of the goods who transfers them and borrows money on them is called the "pledgor."

The person receiving the goods and lending the money is called the "pledgee," who must return the goods to the owner when the debt is paid.

When an article is transferred to a pawnbroker who lends money on it, the bailment is called a "pawn."

According to the law of bailments, if the person who borrowed the money and left the goods as security fails to pay back the money by a specified time, the holder of the goods or the pawnbroker has the right to sell the goods to pay for the debt.

Exercise 1

Indicate whether each statement is true or false by circling **T** or **F** in the space provided. Be sure to check your answers with the lesson notes.

T F 1. A binding contract does not exist unless there is something in writing.

T F 2. To be valid, a written contract need take no particular form.

T F 3. The acceptance must correspond exactly with the offer.

T F 4. The courts will protect people from their own poor judgment.

T F 5. A statement of opinion does not constitute fraud.

T F 6. An offer is completely within the control of the offeror.

T F 7. Social engagements are enforceable at law.

T F 8. A specialty contract is sometimes called a formal contract or a deed.

T F 9. A person should refuse to sign an agreement where blank spaces are to be filled in later.

T F 10. Consideration must be money or something with a money value.

T F 11. Future consideration occurs when the parties perform their part of the contract at the time it is made.

T F 12. A promise to do something in return for past benefits already received is legally enforceable.

T F 13. A promissor can be compelled to carry out a gratuitous promise.

T F 14. There are three parties to a contract of guarantee.

T F 15. A guarantor's duty to pay the debt arises as soon as the debtor defaults.

Exercise 2

Fill in the blank spaces in the following statements; only one word is required for each space.

1. Every time you purchase or even just agree to purchase something, you make a _____.
2. A _____ contract is any contract not under seal.
3. A _____ of _____ is a court order issued to enforce obedience to the orders of the court.
4. The parties to an agreement must be legally _____.
5. _____ is overcoming the will of a person by actual or threatened bodily harm.
6. Fraud is a _____ offence as well as a _____ offence.
7. A counter-offer is a proposal by the _____.
8. A contract under seal takes effect from the date of _____.
9. Once a person has entered into a legal agreement he/she cannot disregard its provisions without committing a _____ of contract.
10. _____ is that which a person receives or is to receive for what he/she does, or promises to do, when entering into a contract.
11. A promise made without consideration is a _____.
12. The most outstanding group of legally incompetent persons is _____.
13. The contract of a minor for the supply of _____ is valid and enforceable.

Exercise 3

From the terms in the columns below place the correct one in the space provided at the left of each definition. Do not use a term more than once.

Term

caveat emptor	a specialty contract
contract of guarantee	an unenforceable contract
fraudulent misrepresentation	a valid contract
an illegal contract	a void contract
an implied contract	a voidable contract
innocent misrepresentation	a writ
misrepresentation	a writ of execution
an oral contract	a written contract

Definitions

_____ 1. A promise to pay for the debt of another person if the other person does not pay.

_____ 2. A false statement made with reckless disregard of the truth and made with the intention of deceving some innocent person for gain.

_____ 3. A court order issued to enforce obedience to the orders of the court.

_____ 4. A contract made by the conduct of the parties although no words have been spoken.

_____ 5. There is no contract which the courts will enforce.

_____ 6. A contract which is valid but the courts will not enforce because of some technical defect.

_____ 7. An old Latin term which means "Let the buyer beware."

_____ 8. A contract which may be impossible to enforce because of lack of proof of its terms.

_____ 9. A binding contract which the law will enforce.

_____ 10. A contract which is forbidden by law.

_____ 11. A legal document issued by a court.

_____ 12. A contract which must be in writing and under seal.

_____ 13. A false statement of material fact made in the honest belief that it is true and without intention to deceive anyone.

_____ 14. A contract which shows the terms of the agreement.

_____ 15. A contract which can be cancelled, usually at the option of one of the parties to the contract.

_____ 16. A false statement of material fact.

Exercise 4

1. What is a contract?

_____

_____

_____

_____

_____

2. What are the essential elements of a valid contract?

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

3. What contracts are required by law to be in writing?

(a) _____

_____

(b) _____

_____

(c) _____

_____

(d) _____

_____

(e) _____

_____

(f) _____

_____

4. For what contracts are minors, i.e., those under eighteen years of age, liable?

_____

_____

5. Give two *of your own* examples of an implied contract.

(a) _____

_____

_____

(b) _____

_____

_____

6. A contract under seal does not need consideration to be enforceable because the seal indicates that

7. What is fraud?

8. What is consideration?

9. Why do the courts not generally consider whether the consideration is adequate?

10. What is a gratuitous promise?

11. What is the nature of a bailment?

12. Explain a worker's "right of lien."

_____

_____

_____

_____

Exercise 5

Opposite each case below write:

A if the bailment was for the benefit of the bailor only.
B if the bailment was for the benefit of the bailee only.
C if the bailment was for the benefit of both parties.

_____ (a) Mrs. Dynes, while her neighbor was away, as a personal favor looked after her neighbor's dog.

_____ (b) Ellis borrowed G's lawnmower to cut his lawn.

_____ (c) Fisher loans Foster his car to take Foster's little boy to the hospital.

_____ (d) Gagnon delivered his race horse to the railway company for transportation to another city.

_____ (e) Forbes looked after Howell's wrist watch and wallet while Howell went swimming.

_____ (f) Howey took his car to the garage to have the wheels aligned.

_____ (g) Mrs. Fletcher left her house plants with her neighbor to be cared for while she was on holidays.

_____ (h) Garritty took his watch to the jeweller to have it repaired.

_____ (i) Hobson left his coat in his friend's office so he would not have to carry it while he went out on an errand.

_____ (j) Homeniuk rented a car from a car rental agency.

Exercise 6

Indicate the best completion of each of the following statements by placing the proper letter in the space provided at the left.

_____ 1. A railway company which accepts goods for transportation is legally acting in the capacity of

(a) bailee.
(b) consignee.
(c) bailor.
(d) vendor.

_____ 2. Dodds borrows $10 from Calder and as a guarantee of repayment he leaves his transistor radio as a

(a) lien.
(b) pledge.
(c) indemnity.
(d) vendor.

_____ 3. Dixon hires Harvey, a cabinet maker, to convert a radio cabinet into a bookcase. Harvey has a claim upon the cabinet until he receives payment for his work under the

(a) Garagemen's Lien Act.
(b) Warehousemen's Lien Act.
(c) Sale of Goods Act.
(d) Possessory Liens Act.

_____ 4. C had just started back to work after a lengthy illness. He needed both food and clothing for himself and his family. His friend D promised to help him and went with him to the general store in the village where they lived. D said to the storekeeper, "Let him (C) have the goods; I will pay you for them at the end of the month." This contract is one of

(a) guarantee.
(b) assignment.
(c) indemnity.
(d) bailment.

_____ 5. A contract of guarantee is made conditional upon

(a) the default of the debtor.
(b) a contract of bailment.
(c) the indemnity of the guarantor.
(d) the default of the guarantor.

Exercise 7

In each of the following cases, give your decision. An answer is of no value unless accompanied by an explanation.

1. Nelson said to Carlson, "Meet me at the theatre entrance tomorrow afternoon at two o'clock. I have two tickets to a musical comedy." Carlson agreed but failed to show up. Has Nelson a legal claim against Carlson?

2. Wilson offered to sell his automobile to Perkins for $2500. Perkins replied, "I'll give you $2250 for it." Wilson refused. Then Perkins said: "Oh, all right, I'll pay you the $2500." Is there a contract?

3. Hooper offered to sell his farm to Sawyer. Sawyer told his friend Wells of the offer and mentioned that he did not plan to accept it. He suggested to Wells that he might accept if he wished to do so. Wells wrote a letter of acceptance, which Hooper received. Is there a contract?

4. While on a fishing trip, Jenkins, a minor, broke his arm and engaged the services of a physician. Claiming infancy as a defence, he refused to pay the physician. Was Jenkins legally bound to pay the physician?

5. Kepler was declared by the court to be insane, and a guardian was appointed to take care of him. Later, Kepler made an agreement to purchase certain clothes from a merchant. Was the agreement binding on Kepler?

6. Garson sues Harris for breach of contract. Harris proves he was intoxicated when the agreement was executed. Does this fact affect the validity of the contract?

7. Corning promised to give his daughter a watch as a birthday present. Was this a legally enforceable promise?

8. Carson's car ran out of gas. Grover, driving by, saw Carson's predicament and offered to tow him to the next filling station. Carson accepted the offer, and after they reached the filling station, Carson said he would send Grover a cheque for $25 for his kindness. Is he legally bound to do so?

9. Cooper, meeting Ames on the street, orally agreed to sell him his summer cottage for $35,000. Was this an enforceable contract?

10. If a church in your community was conducting a building campaign to construct a new parish hall and a wealthy merchant sent a letter agreeing to donate the sum of ten thousand dollars, should he be held responsible to pay the money?

11. Mrs. Clark, who was travelling by train from Edmonton to Vancouver, checked a suitcase on her ticket. In the suitcase were two valuable rings and a fur jacket. The suitcase was lost in transit. Even though the liability of the railroad company as stated on the back of the baggage check is limited to $100, Mrs. Clark sues for $5,000 which she feels will cover her loss and compensate for the inconvenience which she suffered as a result of the loss. Will her suit be successful?

12. Mrs. Cummings borrows a neighbor's expensive camera to take some pictures. She carelessly leaves it on the lawn overnight. It rains and the camera is seriously damaged. Will Mrs. Cummings have to pay for the damage?

13. Henderson guarantees payment for a Ford light delivery truck to be sold by Excelsior Used Car Sales to Dodds. After the guarantee has been signed and without Henderson's knowledge, Dodds and Excelsior Used Car Sales agree to substitute a Chevrolet light delivery truck at a slightly higher price, and Dodds takes delivery. Dodds does not pay at the time agreed upon, and Excelsior Car Sales tries to collect from Henderson. Will Henderson have to pay Excelsior Car Sales for the truck?

14. Morgan ordered a meal at a restaurant and left his briefcase containing valuable papers on the chair by his table while he went to the washroom. When he returned, the briefcase was gone. Can he hold the restaurant proprietor liable?

END OF LESSON 13

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____

Correspondence Teacher

St Serv 1-86

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.**

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

THE CONTRACT OF SALE

The production and marketing of goods today proceeds by a succession of contracts, many of which are contracts of sale. We find, for example, a contract of sale in the acquisition of raw materials and again at each stage in the distribution of manufactured goods to wholesalers, to retailers, and to consumers.

The contract of sale has enjoyed such a position of pre-eminence only in modern times. The economic activity of medieval England was mainly agrarian, and much of the law was concerned with feudal rules for holding land. Not until the late eighteenth century when England had become the world's first industrial power did the law governing the distribution and sale of goods become the subject of frequent decisions in the courts. In the succeeding years, general principles began to emerge from the decisions of the courts, and in the latter part of the nineteenth century these principles were well established. By this time the body of case law was immense. Lengthy accounts were written in an attempt to rationalize the cases into a logical pattern. In 1893 the British Parliament simplified the case law by codifying it into a comprehensive statute called the Sale of Goods Act. All the common law provinces in Canada have since adopted this Act almost word for word.

For the Sale of Goods Act to apply, the subject-matter of the contract must be *goods*. Property is divided into two main classes -- real property and personal property. Real property is confined to interests in land and buildings; all other property is called personal property. The courts have interpreted the Sale of Goods Act to exclude the sale of items whose final value is mainly attributable to the skill and labour that have gone into their preparation at the request of the buyer. These contracts have been held to be for work and materials and not for goods within the meaning of the Act; accordingly, they are outside its scope. All other goods come within the definition of goods in the statute.

In the Sale of Goods Act, a contract of sale "is a contract whereby the seller transfers or agrees to transfer the title in the goods to the buyer for a money consideration, called the price." Money must form a part of the transaction; it follows, therefore, that a straight barter of goods where no money changes hands is not a sale within the scope of the statute.

The Sale of Goods act distinguishes between a sale and an agreement to sell. In a sale, the ownership or title in goods passes from the seller to the buyer at the moment the contract is made. In an agreement to sell, the transfer of ownership or title to the buyer is deferred until a future time; that time is either a specified date or an indefinite date depending upon the fulfilment of a particular requirement. The Sale of Goods Act applies to both sales and agreement to sell. An agreement to sell may be formed even when the goods are non-existent. A contract to sell goods to be manufactured in three months' time or to sell a crop from a certain field when it has grown are examples of this type of agreement to sell. An agreement to sell is a binding contract just as are all other contracts containing promises of future conduct.

We may at this point conveniently distinguish a contract of sale from another type of transaction known as a consignment. A consignment is a shipment of goods from one location to another; the shipper is the consignor and the recipient the consignee. There are two common varieties of consignment. First, the consignor may ship the goods in performance of a contract sale; here the consignor is a seller and the consignee a buyer (or possibily, someone financing the buyer). Secondly, the consignor may ship the goods to an agent who will offer them for sale at their new location. In this instance it is not necessary for ownership in the goods ever to pass between the consignor and consignee; if the consignee sells them the title passes directly from the consignor to the purchaser. Expensive items displayed in the window of a jeweller's shop, for example, may not be a part of the jeweller's stock-in-trade but may be held on consignment from the manufacturer.

Sale of goods legislation generally governs the buyer/seller transactions, including that involving the consumer. Some of the more important provisions dealt with in the provincial Sale of Goods Act are as follows:

- ingredients which make up the contract;
- generally, subject matter of the contract;
- stipulations as to conditions and warranty of fitness of the product;
- performance of the contract;
- rights in breach of contract.

It should be stressed however, that the Sale of Goods Act is a very general document. For the most part, buyers and sellers are free to contract for any terms which they wish to put in the agreement. That is, with a few minor exceptions, the law allows the two parties to freely enter into an agreement and, whatever the terms, it is binding at law if it meets the basic criteria of a contract.

Ownership and Possession

The concept of ownership is not restricted to tangible or physical objects as the law will protect the right to own things which are in fact intangible. Some examples of things which may be owned but which are not tangible include patent rights, copyrights, and trade names. Ownership involves not merely the right to possess something, but also the right to possess it to the exclusion of every other person. Ownership is therefore divisible; one person might own something, for example a car or a boat, and yet give another person the right to possess it by loaning it or renting it to him.

There is an old cliche that "possession is nine tenths of the law." There is some validity in that statement, because as a general rule, the law says that if someone seeks to dispossess another of goods, then the person who seeks to do so must be able to satisfy the court that he/she has a higher right of possession than the person from whom he/she wishes to take the goods.

When is Ownership Transferred?

There are reasons why it may be important to know when the ownership passes. For one thing, the remedies of an unpaid seller depend upon that question. A retailer may accept an order from a customer for a suite of furniture and agree to deliver it immediately and let the customer put it on a charge account. The goods are ready to deliver, and no conditions have been attached. Under the rules of the Sale of Goods Act, the ownership in such a case passes to the customer immediately, before delivery and before payment. Suppose the retailer then discovered before delivery that the customer has a bad paying record. The retailer cannot now refuse to deliver because the goods belong to the customer. If the retailer does, the Act provides that the customer may sue for damages for breach of contract. To guard against this, the seller should make it a term (*condition*) of the contract of sale that the ownership will not pass until the full price is delivered immediately. Such a contract is now widely used in the retail business and is known as a "Conditional Sale Contract" or a "Hire Purchase Agreement."

There is only one occasion when an unpaid seller can recover the goods after the ownership has passed to the buyer. If, before the goods are delivered, or while in the course of being delivered (*in transit*) or (*in transitu*), the buyer becomes insolvent, the seller may repossess them and hold for payment or may re-sell.

We have seen that the seller of goods can make it a term of the contract that the purchaser does not acquire ownership until the full purchase price has been paid. But the seller has still another danger to guard against. The Sale of Goods Act provides that when a person who has agreed to buy goods obtains possession of the goods or the invoices or bills of lading with the seller's consent, the buyer may sell to a third party who has no notice of the terms of the conditional sales contract; and under such circumstances the innocent third party acquires the full ownership in the goods.

And this remains true even if the seller in giving possession has expressly forbidden the purchaser the right or authority to sell. A dishonest purchaser can thus obtain possession of goods without paying and then re-sell. The unpaid seller cannot now repossess. Of course, the seller can sue the dishonest purchaser, but that may not help. And how can the seller give to the whole world such effective notice that no one can be in any doubt as to the true owner? The answer is found in the Conditional Sales Acts of the various provinces. The seller who wishes to deliver goods to the purchaser but retain the ownership until payment in full can have the purchaser sign a written contract, and register it as provided for in that Act. Everyone is then deemed to have notice - the law will not permit persons to claim that they believed the dishonest purchaser to be the owner.

The Act provides that the capacity to buy and sell is governed by the ordinary rules of contract with this exception - that if infant's (that is, persons under 18) or mental incompetents buy goods which they require and which are suitable to their station in life, they must pay a reasonable price for them.

The Act further provides that if the value of the goods is less than $50.00, the contract of sale may be verbal or written, or may be implied from the conduct of the parties. If, however, the value is $50.00 or more, then there must be a written contract, or the buyer must take delivery of some or all the goods, or pay part or all the purchase price. Thus if a wholesaler's agent were to accept a verbal order for machinery worth $1,000.00 to be paid for on delivery, the buyer could refuse to take delivery later and the seller would have no remedy. Written orders or part payment are most important in any transaction involving goods worth $50.00 or more.

The law relating to sale of goods was not a theoretical code worked out by a few legal scholars. It was formulated slowly as disputes arose and were referred to court. The judges in deciding such disputes would adopt the general customs which prevailed among merchants. Thus the general practices or customs of the merchants gradually became the law.

It was not practicable in the early days of commerce, nor is it now, to reduce every contract of sale to writing. When one buys a case of canned goods from the grocer, neither the buyer nor the seller would consider putting the contract in writing. But there are certain terms of the sale which both parties would put in the contract if they did reduce it to writing. These terms, implied in all contracts, and evolved by merchants themselves over many years of commerce, were adopted by the judges as the law of England and finally incorporated into the Sale of Goods Act. The Canadian Acts have in turn copied the English Act. Our Sale of Goods Act now contain a number of such implied terms and provide that such terms shall apply to all contracts of sale unless the parties expressly exclude them. This protects both parties and speeds up and simplifies their transactions.

Among the most important of such terms are:

(a) That buyers have the right to sell goods either because they own them or because the owner has authorized them to sell;

(b) That there is no encumbrance or charge against them;

(c) That if the buyer buys only from a description, the goods will correspond with the description;

(d) That if the buyer sees only a sample, the goods will correspond with the sample; the buyer will have a reasonable opportunity to compare the goods with the sample; and the goods shall be free from any defect not apparent on a reasonable examination of the sample.

The most important implied terms in contracts of sale of goods relate to the question of the quality of the goods and their fitness for the buyer's purpose.

If the buyer purchases a truck, the buyer is concerned about two things: its quality — whether it is in good running order — and its fitness for the job. The Act provides that generally speaking there is no implied term in the contract that the goods are of good quality or that they are fit for the buyer's purpose. It is this provision of the Act — and this custom of the merchants which the Act adopted — which gives rise to the saying "caveat emptor" — let the buyer beware. It is the buyer's responsibility to check both the quality and the fitness before purchasing goods.

To this rule the Act sets out two exceptions:

1. Where the buyer lets the seller know that the buyer relies on the seller's skill and judgment, and the seller is in the business of supplying those goods there is an implied term that the goods will be fit for the purpose. This does not apply if the buyer asks for goods by their parent or trade name. If you write to a dealer in automotive equipment and ask that you be sent the best equipment for reducing the emission of pollutants from your car, there is an implied term that what is sent will do the job. But if you write asking for the "Acme Pollution Eliminator," there is no such term. You are presumed to have satisfied yourself that it will do the job for you.

2. If the buyer buys by description from a seller who deals in goods of that description ("1,000 tons Northern hard wheat"; 20 pure-bred Jersey heifers," 100 bales Egyptian long-staple cotton"), there is an implied term that the goods are of marketable quality. This provision does not apply if the buyer has examined the goods and has missed any defects which could have been discovered by a proper inspection.

The buyer's remedy if any of these various implied terms are broken is either to rescind the contract and obtain a return of any money paid or to sue for damages.

The Sale of Goods Act does not use the word "term." It uses "warranty" and "condition." Both words are defined in the Act and will be discussed shortly.

The seller performs the contract of sale by delivering the goods, and the buyer performs the contract by paying for them. In the case of an agreement for sale either party may have additional duties to perform — as manufacturing or completing the manufacture of the goods, weighing, measuring, or testing them.

The Act sets out a number of rules applying to the parties' respective responsibilities to deliver the goods and to pay for them, including cases of delivery by instalments. It provides that if no special agreement is made sellers may deliver the goods at their place of business, or their residence. If, by agreement, sellers must deliver the goods to the buyer, then they must do so in a reasonable time.

The Sale of Goods Act also provides the remedies for each if the other defaults. If the buyer fails to pay, the seller may sue for the price of the goods and if the buyer has refused to accept delivery, may sue for damages. If the seller refuses to deliver, the buyer may sue for damages, or may in some cases obtain a court order compelling the seller to deliver. The seller may refuse to deliver if payment is due and the buyer has not paid, and may retain possession until payment is made.

If the seller delivers less than the contract calls for, the buyer may reject them.

Example of a Contract for the Sale of Goods

_____

Seller:

_____(Name)_____ of _____(City, Province)_____

Buyer:

_____(Name)_____ of _____(City, Province)_____

The seller hereby agrees, in consideration of the promises below, made by the buyer, to deliver to the buyer the following goods:

_____(Describe in Detail)_____

_____ on _____(Date of Delivery)_____

The buyer hereby agrees in consideration of the above payment of the seller that the buyer shall pay _____ dollars to the seller on

_____(Date on which payment is to be made)_____

Seller: _____(Signature)_____

Buyer: _____(Signature)_____

Conditions and Warranties

A condition is defined as an essential stipulation in a contract of sale, the breach of which may give rise to a right to treat the contract as repudiated. Of course, the buyer need not repudiate: the buyer can affirm the contract instead and claim damages. Therefore, conditions concern some important element of the contract.

A warranty is a stipulation, the breach of which may give rise to a claim for damages but not a right to treat the contract as repudiated. Warranties concern certain non-essential elements of a contract.

By way of illustration, sellers of refrigeration equipment which was claimed to keep perishable food from spoiling in tropical conditions but which allowed it to spoil in even a moderate climate, have obviously violated a condition and will have to take back their equipment for a full refund. If, however, the equipment performed its refrigeration functions adequately most of the time, and merely broke down occasionally, then the sellers will be liable for only a financial adjustment or free service for the malfunctions. In such a case, the sellers are said to have violated a warranty and this does not result in the contracts being terminated.

Contracts frequently stipulate whether some of the terms and promises in them constitute conditions or warranties. When this is not done, the court may be called upon to decide.

Conditions in Contracts of Sale

The parties may make any bargain and stipulate any condition they like. The word "condition" in the law of sales is one which must be used with care. It is commonly used in at least two senses: (1) some event or occurrence that fixes the liability of a promisor to do what the promisor has contracted to do; (2) a clause in a contract that defines such an event and the legal consequences intended by the parties. The first is generally agreed to be its principal meaning. But one must be careful not to assume that a stipulation in a contract of sale is to be given the force of a condition, merely because it was expressed to be one of the "terms and conditions" of the contract. When a stipulation in a contract has been intended by the parties to be given the force of a condition, its non-occurrence, or the failure by the party whose duty it was, under the contract, to bring it about, entitles the other party to repudiate the entire contract. It is often said that a condition is a stipulation going to the rest of the contract, and of fundamental importance. It is this intention of the parties to allow the promisee to repudiate the contract which gives a condition its crucial importance.

Thus, in saying that the parties may stipulate any condition they please, it is intended to point out that they are at liberty to prescribe that the happening of any event or the performance of any promise contained in the contract, may be an absolutely essential occurrence before their agreement to sell is to become a sale, irrevocably transferring the property from one to the other. For example, where the goods are sold "to arrive" on a certain vessel, or to comply with a certain description, the arrival of the vessel or the compliance of the goods with the description may be conditions of the contract. In every case it is a question of determining the parties' intentions. There are few presumptions of universal application to aid one in determining the intention of the parties in this respect. Regard must always be had to all the circumstances of each particular case, and the effect given to customs proved to apply in the particular business or locality involved. In contracts between merchants the courts have held that stipulations as to the time, place and mode of shipment of the goods are conditions. It is doubtful whether a similar result would be reached in a case between a merchant and a person buying for his own consumption, without some clear evidence in the contract itself that time of performance was to be crucial.

Warranties

A stipulation or promise contained in the contract, but which the parties do not indicate is to be given the force of a condition is called a warranty. The Sale of Goods Act provides that "warranty" means an agreement with reference to the goods that are the subject of a contract of sale but which is secondary to the main purpose of such contract. Breach by a party of promises having the force of warranties gives rise for the other party to claim damages, but not the right to reject the goods and treat the contract as repudiated.

Warranties and conditions must be distinguished from mere representations, which are innocent (as opposed to fraudulent) statements made by a party intended to induce, and in fact inducing, the other party to enter into the contract, but not being made as promises in the contract.

Implied Conditions and Warranties

Not all the obligations of the parties to a contract of sale need to be spelled out in the bargain. The law will provide certain stipulations covering important, but frequently overlooked details, unless, of course, there is some evidence that the parties intended no obligation to be imposed in respect of some matter. In so doing, the law is sometimes said to be proceeding according to the presumed intentions of the parties. In thus striving to give reasonable business clarity to a transaction which makes no mention of some crucial point, the court will hear evidence of all the circumstances, including customs and usages.

The basic rule of the common law of sale is that there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale. As previously mentioned, this is the rule of caveat emptor — let the buyer beware. But caveat emptor does not mean, either in law or in Latin, that the buyer must take a chance. The seller is not, by this rule, licensed to cheat or trick, or wilfully mislead the buyer. The rule merely means that buyers must take it upon themselves to ask questions and obtain promises and, if need be, conditions from the seller in order to assure themselves that they are obtaining what they desire. To illustrate, in a recent case, A purchased a cottage from B after having had ample opportunity to inspect and otherwise examine it. B, honestly belieiving the cottage to be in good condition stated that it was "in good condition in his opinion." It subsequently appeared that substantial repairs were required. In a court case to have the contract set aside or to recover damages, it was held that there had been no warranty and the rule of caveat emptor applied. The buyer could not complain of that which he might have discovered at the time of the purchase by taking proper care.

Unless the contract shows a different intention, there is an implied condition to be fulfilled by the seller, (1) in the case of a sale, that the seller has the right to sell the goods, and (2) in the case of an agreement to sell, that the seller will have such right at the time the title to the goods is to pass. Unless the parties provide otherwise, there is also (1) an implied warranty that the buyer shall have quiet possession of the goods, and (2) an implied warranty that the goods will be free from any charge or encumbrance in favor of any third person not declared or made known to the buyer before or at the time when the contract is made.

In a sale by description, there is an implied condition on the part of the seller that the goods shall correspond with the description. If the sale is by sample as well as by description, the goods must correspond with both description and sample. There is a sale by description wherever buyers show that they rely upon the seller's description. This will most often occur in connection with future or unascertained goods, as where the buyer agrees to buy so many tons of No. 1 wheat. If that commodity is not supplied, the buyer may reject. But there may also be a sale by description even though the goods are specific, as where the sale is of an entire heap of coal described as "anthracite," or of a second-hand reaper, not previously seen by the buyer, but described by the seller as having been new the preceeding year and to have cut only fifty acres. The goods may be rejected if they fail to answer those descriptions. There may even be a sale by description where the buyer is buying something displayed on the counter of a store, so long as it is sold not merely as that specific thing, but as a thing corresponding to a certain description, e.g., a clock radio or a corkscrew. Where significant quantities of goods of a different description are delivered intermingled with the goods of a contract description, the buyer may reject the whole shipment and treat the contract as repudiated.

"There is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale." The Sale of Goods Act has amended this common law rule in important particulars. Where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods will be of merchantible quality. The condition may be implied whether the seller is the manufacturer or grower of the goods or simply a dealer in goods of that description. But where the buyer has actually examined the goods, there is no implied condition in respect of defects that such an examination ought to have revealed. There is no definition in the Act of "merchantable quality," but it has been held by the courts that goods comply only when they are of such quality and in such condition that a reasonable person would, after full examination, accept the goods in the circumstances of the case, in performance of the offer to buy them, whether bought for the buyer's own use or to sell again. Goods are not of merchantable quality simply because they look all right, if there is in fact some material defect about them. However, if the buyer examines the goods, there is no implied condition as regards defects which such examination ought to have revealed. Where the goods are not bought by description as where the contract is for a specific article, the condition of merchantable quality is not implied.

Where the buyer, expressly or impliedly, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer is relying upon the seller's skill or judgment, and the goods are of a description or kind that is in the ordinary course of the seller's business to supply, there arises an implied condition that the goods will be reasonably fit for such a purpose. This condition may be implied whether the seller is the manufacturer or grower of the goods or is simply a dealer in goods of that kind. Unlike the implied condition as to merchantable quality, this condition as to fitness applies equally to sales of specific goods and sales by description, so long as buyers show that they are relying upon the seller's skill and judgment, and are led by the seller's words or conduct to continue to rely. Not much is required of the buyers in making known to the seller the particular purposes for which they may impliedly require the goods. On a sale of an article which has, in common usage, only one purpose (such as pajamas or a radio) the goods must be reasonably fit for the accustomed purpose.

On the other hand, if buyers specifically describe the article they require, or select what they want from a display of several types, relying upon their own judgment as to its fitness, the mere fact that the seller is aware of the buyers' intended use of the goods and says nothing, is not sufficient to raise the question of fitness. Also, where buyers agree to buy goods "as is" or "with all faults" and there has been no misrepresentation of their condition by the seller, the buyers have no cause of action on any implied obligation of fitness. All such have quite obviously been removed by the agreement of the parties. The condition is that the goods will be reasonably fit for such a purpose. It is not proof that the condition was not met simply to show that a machine broke after use, or that a defect appeared in time. The buyer must link the defects to the inherent deficiencies of the goods themselves and, so far as is possible, eliminate or explain away the influence of other causes.

Consumer Tips

- Before you buy, read your guarantee to be certain it clearly states what is being guaranteed.
- Comparing guarantees should be an important part of your buying decision.
- The lowest price may not be best if the seller can not afford to provide a guarantee.
- Check to see not only what is covered but also what is not covered.
- Get all promises in writing, beware of the seller who will not back up his promises in writing.
- Beware of meaningless statements like, "Fully Guaranteed," or "Lifetime Guarantee." Ask "fully, against what?", and "whose lifetime?"
- What is covered, the whole product or only certain parts?
- Is the seller equipped to provide service; is there a factory authorized outlet nearby?
- Who pays for parts or labor?
- How long is the warranty coverage for?
- In the event of product failure is there cash or credit reimbursement?
- Will a substitute product be provided while yours is being repaired?
- Does the seller have a record of honouring warranty commitments?
- Beware of impressive looking, or wordy warranty documents; they usually are designed to cover up what they do not cover.

Disclaimers

Sellers not wishing to be bound to the implied conditions and warranties in their contracts of sale may insert disclaimers or exculpatory (to clear from blame or fault) clauses into their standard printed forms of contracts. If these become terms of the contract, by the buyer's attention being drawn to them before the contract is made, they may be given effect in law according to their intention. It is difficult to generalize the effect that such clauses may have since each must be construed according to its own terms. A typical disclaimer might excuse the seller from performance of any condition or warranty express or implied as to the quality of the goods or their fitness for any particular purpose. This may bar or disallow the buyer's rights described above. One significant exception to the operation of such disclaimer clauses arises when the performance proffered by the seller falls so far short of a reasonable standard as to amount to a fundamental breach of the entire contract.

Lost or Destroyed Goods

Where specific goods are sold, but at the time of making the contract has already been lost or destroyed without the seller's knowledge, the contract is void for impossibility of performance, e.g., sale of cargo lost at sea. Apart from any express term as to risk of loss, where there is an agreement to sell goods, whether in existence yet or not, and subsequently, before the title to them passes to the buyer, the contract is void for impossibility of performance and the seller has the loss, e.g. goods destroyed by fire, but the seller is not liable to the buyer for failing to deliver.

Where the seller of goods agrees to deliver them at his/her own risk at a place other than where they are when sold, the buyer must nevertheless, unless otherwise expressly agreed between the parties, assume any risk of deterioration in the goods necessarily incident to the course of transit. Risks not necessarily incident to the course of transit are, in such a case, assumed by the seller.

The Price of Goods

Unless it is otherwise agreed, payment and delivery are concurrent conditions. Where the price is not fixed in the contract or left to be fixed in an agreed manner, the buyer must pay a reasonable price, which depends upon the circumstances of each case. Where goods are to be measured, weighed, etc., to fix the price, and such is not possible due to the perishing of the goods, if the buyer is liable at all to pay the price by having the risk of loss, the buyer must pay a reasonable price for sound goods of that type.

If no price is agreed upon in the contract, and no method is agreed to by the parties for determining the price at the time set for performance, the contract may be unenforceable for uncertainty in this important term. The parties may simply have indicated by leaving their bargain incompletely formed, a desire to continue negotiating without being bound to each other in a legally enforceable contract. Where, however, the intention of the parties, as evidenced by their conduct, circumstances and correspondence, seems to have been to bind themselves to a contract with an "open" price, the court would impose a reasonable price at the time set for performance.

Lack of Title

When goods are sold by a person not the owner, without the owner's consent or authority, the buyer acquires no better title than that held by the seller; in other words, the buyer acquires no title. When goods are stolen and sold, the title to item does not pass from the seller; hence, a purchaser cannot acquire a title and must return the goods on demand, without compensation.

Example:

A stranger called at Barry's house and offered to sell him what appeared to be a good transistor radio for ten dollars. He said he had had some bad luck and needed the money. Barry gave the stranger the ten dollars and took the radio. The next day a policeman came to the door and told him it had been stolen from a store two blocks away. The police were not able to find the stranger who had apparently left town. The transistor radio was returned to the owner. Barry lost ten dollars.

It is a fundamental rule of law that no one gets good title from a thief. Thus, if there is any doubt, it is always best to investigate the titel of someone offering to sell something. A person should be sure that the seller has the right to sell the goods before paying for them. The Criminal Code provides that if a thief is convicted, the stolen property may be ordered to be returned to the lawful owner, even though it was transferred to an innocent purchaser for consideration. The Code further provides that the innocent purchaser is to be reimbursed, as far as may be possible, out of money found in the possession of the thief at the time of arrest, except where there is a dispute as to the ownership or right of possession to the money as well. If that money is not sufficient, the court may order the thief to pay the unsatisfied amount out of personal assets.

Even where the suspected thief is not convicted, the court may still make an order for restitution of property if it is convinced that someone (although not the accused) obtained it as a result of a criminal offence. However, the court is powerless to act if the property has been bought by an innocent purchaser from the accused. This simply means that in such a case the court may not order restitution, but leaves the lawful owner to establish title against the innocent purchaser before a civil court.

With goods that are found, the situation is a little different from that of stolen goods. The rights of a finder are good against everyone but the true owner. The true owner always has the right to recover the goods, but if the true owner is not discovered, the finder has the right to keep the goods.

Delivery of Goods

Unless it is otherwise agreed, delivery of the goods and payment of the price are concurrent conditions of the contract of sale. That is to say, the seller must be ready, willing and able to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready, willing and able to pay the price in exchange for the goods. If, in a sale of specific goods in a deliverable state, nothing is said about either delivery or payment, it is the duty of the seller to yield possession upon demand made by the buyer and tender of the price.

A delivery may be affected by the seller doing any act or thing whereby the goods are put into the custody or control of the buyer. It depends upon the contract whether the buyer is to take possession or the seller is to send the goods to the buyer. Apart from the contract, the place of delivery would apparently be the place where the goods are; and, the Sale of Goods Act provides that in the absence of agreement, the place of delivery is the seller's place of business but, if the parties know the specific goods sold are at some other place, the latter place is the place of delivery.

Where the seller is to send goods, and no time is fixed, the seller must send them within a reasonable time. Circumstances causing delay without the seller's fault must be considered; e.g., where the truck bringing the goods was delayed by a snowstorm. Similarly, if the buyer is to take possession of the goods, the buyer must do so within a reasonable time. If the goods are in the hands of a third person, such as a storage company, there is no delivery until such a person acknowledges holding the goods, and the acknowledgement must be consented to by both the buyer and seller.

Where the seller delivers a smaller quantity than was contracted for, the buyer may reject them; but if the buyer accepts them, the buyer must pay for them at the contract rate. If a larger quantity than was contracted for is delivered, the buyer may reject the whole, or keep the correct quantity and reject the rest; but if the buyer keeps the whole, the buyer must pay for them at the contract rate. If other goods are mixed in, the buyer may reject the whole or keep those contracted for and reject the rest.

Sometimes the agreement states that the seller is to send the goods to the buyer. In such cases the two common types of contract used are f.o.b. contracts and c.i.f. contracts.

F.O.B. Contracts

The letters f.o.b. stand for free on board. Under an f.o.b. contract it is the duty of the seller to put the goods on board the carrier to be shipped to the buyer. The seller bears the cost of putting the goods in the hands of the transportation company at the shipping point, but the buyer must pay the freight charges for the goods from the shipping point to their destination. It is sometimes said that f.o.b. actually means free until put on board.

When goods are shipped f.o.b., title to the goods passes from the seller to the buyer when the goods are put on board the carrier at the shipping point for delivery to the buyer. Delivery is complete when once the goods are put on board the carrier, but the seller should give notice of shipment to the buyer so as to enable the buyer to insure the goods. If the seller fails to do this, the goods will be at the seller's risk during shipment.

C.I.F. Contracts

The letters c.i.f. stand for cost, insurance and freight. Under a c.i.f. contract the buyer has the right to have the goods delivered, or the right, if they are lost or damaged, of receiving their value from the insurer. The seller ships the goods and arranges for their transportation and for the insurance of the goods during transit. The insurance and transportation charges, as well as the cost of the goods, are charged to the buyer. The goods while being shipped are at the risk of the buyer; this risk will be covered by the insurance.

A c.i.f. contract is convenient for a buyer contracting for goods from a long distance away or from another country. Under such a contract the buyer knows in advance what the goods will cost delivered. The buyer must pay for the goods before their arrival and so is unable to examine the goods before paying for them. In such a case the buyer has the right to examine the goods when they arrive, and if they do not agree with the contract or sample, or are not fit for the purpose for which they were intended, the buyer may refuse to take them and get back the money paid for them. In a c.i.f. contract, the buyer assumes the risk from the time of shipment, that is, when the goods are put aboard the carrier.

Acceptance of Goods

The question of acceptance arises only where the buyer has the right to reject the goods. The buyer has the right only where the title to the goods has not passed and the goods are not according to the contract; or where though the title has passed, the buyer can take advantage of some condition not fulfilled because of the presence in the contract, either express or implied, to that effect.

Where goods are delivered which the buyer has not previously examined, the buyer is not deemed to have accepted them until having a reasonable opportunity of inspection to see if they correspond to the contract, and, unless otherwise agreed, the seller on tendering delivery must allow such an opportunity, the place of inspection generally being the place of delivery. If the buyer fails to inspect at the place agreed for inspection, the buyer cannot afterwards reject the goods as being inferior, but would have to sue for compensation for the seller's breach of promise, which, because of the Sale of Goods Act, must be treated as a breach of warranty.

The buyer is deemed to have accepted the goods when so indicated to the seller, or does any act to the goods inconsistent with ownership by the seller, such as resale, or use, or delivery to another person, after a reasonable opportunity to inspect, or when the buyer does not notify the seller of rejection within a reasonable time. Unless it is otherwise agreed, the buyer on rejecting the goods is not bound to return them to the seller, it being sufficient merely to intimate to the seller that the buyer refuses to accept them. Where the contract provides a time for rejection, and the buyer does not reject within such time, the burden is upon the buyer to show there was no way to discover the breach of condition earlier, such as might be the case if the condition was the genuineness of a painting or other work of art. If the goods are retained over a long period of time it could be evidence that the identity of the artist was not really a condition.

Where the seller requests the buyer to take delivery, and the buyer does not do so within a reasonable time, the buyer is liable to the seller for any loss caused by this refusal or neglect and also for a reasonable charge for care and custody of the goods. These amounts would mark the minimum liability of the buyer. Nothing provided in the Sale of Goods Act laying down these guides affects the right of the seller to regard the refusal by the buyer to accept delivery as a repudiation of the entire contract, entitling the seller to greatly increased damages for the loss of the bargain.

Unpaid Seller's Rights

A seller remains unpaid while any portion of the agreed price is unpaid, or when a bill of exchange or other negotiable instrument which has been received as payment has not been honored. The seller's rights extend over all of the goods for the whole price, except where the price has been apportioned by agreement of the parties.

The unpaid seller has a lien upon the goods for the price while they are in the seller's possession, unless the contract provides otherwise. Where an unpaid seller has made a part delivery of the goods, the seller may exercise this right of lien or retention of the remainder of the goods unless the part delivery has been made under such circumstances as to show an agreement to waive the lien.

Where the seller remains unpaid and the buyer becomes insolvent, the seller may exercise the right of stoppage in transitu. *Insolvency* as used in this context does not mean actual declared bankruptcy, but simply that the buyer cannot pay debts in the ordinary course of business as they fall due. If after stoppage, the buyer proves there is no insolvency, the buyer is entitled to delivery of the goods and to be paid damages for losses occurred by the wrongful stoppage. It is also to be noted that the stoppage does not revert the title in the goods back to the seller, but a security interest only, in the nature of a lien.

The right of stoppage in transitu is exercised by the seller informing the carrier to stop the goods in transit. Were a carrier to ignore such notice it would run the risk of wrongfully detaining them from the seller as the person entitled to immediate possession. After a valid stoppage, the carrier must redeliver the goods to, or according to the orders of the seller. The additional expenses involved must be borne by the seller. Upon thus resuming possession of the goods through the carrier, the seller is entitled to retain possession until payment or tender of the price by the buyer. The contract remains in force, notwithstanding the stoppage in transit and repossession by the seller, for the Sale of Goods Act provides that the mere exercise by the seller of this right does not in itself constitute a repudiation of the contract of sale.

Where part delivery of the goods has been made to the buyer, the remainder of the goods may be stopped in transitu unless the part delivery has been made in circumstances showing an agreement by the seller to surrender possessory rights in the whole of the goods.

Seller's Right of Resale

After exercising the right of lien or stoppage in transit, the seller may resell the goods, and the second buyer obtains good title. Where the goods are of a perishable nature, or where the seller notifies the buyer of the intention to resell, and the buyer does not within a reasonable time pay the price, the seller may resell the goods and recover from the buyer damages for any loss caused by this breach of contract; but the seller must account to the buyer for any profit realized on such resale and must return any deposit held. Also, where the seller has power by the contract to resell goods upon default by the buyer, the resale, though it rescinds the contract, does not prevent the seller from claiming damages for loss.

Conditional Sales Contracts

A conditional sale of a chattel (personal property) is a sale in which the transfer of the title to the thing sold, or the buyer's right to retain it, is made dependent upon the performance of a condition, usually payment in full of the price by instalments, and notwithstanding delivery to the buyer, the completion of the sale depends upon due payment or other performance by the buyer, so that meanwhile the ownership is not vested in the buyer. There are statutory requirements concerning such sales which are designed to prevent fraud and, to a lesser extent, to regulate onerous conditions imposed on the buyer.

Various contract forms are encountered. The appearance in growing numbers since the end of World War II of the large, nationally operative finance companies has tended to reduce the numbers of local forms and variants and to bring much more uniformity to contract terms across the country. In furtherance of the agreements made by these finance companies with dealers in consumer goods, the finance companies supply contract forms and other stationary to be used by the dealers when making conditional sales of goods to consumers. After completion the contract is then assigned to the finance company which collects instalments.

These contracts commonly combine, on one long sheet of paper, a conditional sale contract and, separated only by a perforated line, a promissory note to be signed by the buyer, engaging again to pay the price and setting out the monthly payments and the total sum financed. In the conditional sale contract the goods are described, the price and finance charges specified and the details of the buyer are given, along with some credit information.

The terms of the contract are commonly printed on the back of the original and the buyer's copy of the contract. These vary slightly from one finance company to another, but invariably provide to the effect that "Title to, property in and ownership of the said goods shall remain in the Vendor, but at the Purchaser's risk until all amounts due under this contract...are paid in cash." Other terms may be expected to provide that the buyer may not sell or otherwise dispose of the goods or interest in them without consent of the finance company; that the buyer will insure the goods and pay off the finance company out of the proceeds if they should be destroyed; that the finance company may seize the goods upon any default by the buyer, sell them to another and collect from the defaulting buyer the amount of any deficiency realized on the transaction. That is to say, the contracts provide that the buyer is to remain liable for the total agreed price and finance charges even though the goods may be seized and resold by the seller or the finance company, provided that the total amount thus realized by the seller and the finance company does not exceed the originally agreed price and charges. Most of the standard form contracts also provide that if the total amount realized by the finance company, taking into account all instalments paid and the amount derived from the resale, exceeds the originally agreed price and charges, the surplus must be returned to the defaulting buyer.

In Alberta the Conditional Sales Act applies to every sale or bailment (rental or loan) of goods that the right of property or right of possession of the goods, in whole or in part, remains in the seller or bailor (owner) notwithstanding that the actual possession of the goods passes to the buyer or bailee (renter). The Act does not apply to bailments where it is not intended by the parties that the title to the goods shall eventually pass to the bailee on the payment of the purchase price, or on the performance of some other condition on the part of the bailee.

The contract must be put into writing, signed by the buyer or bailee, and contain a description of the goods. Within 30 days of the actual delivery of the goods to the buyer or bailee a copy of the contract must be registered. Alberta has introduced a scheme of central registration of all charges on personal property. Instead of registration being required in the county or district in which the buyer resided at the time of the contract, this legislation now provides for one central Registry Office in which all charges on personal property are located.

It may be observed that the Conditional Sales Act is designed to accomplish one primary objective; that is to protect, as far as possible, members of the public who deal with the buyer in possession under the conditional sale contract as the owner of the goods, when the buyer is not in fact the owner. Thus, if the buyer sells the goods to a third person who takes them for valuable consideration, in good faith and completely without knowledge of any prior rights or interests in anyone, the secret reservation of title by the original seller is completely ineffectual as against such a subsequent purchaser unless the original conditional sale contract was registered in accordance with the Act. If the contract was registered, then the buyer from the person in possession or person(s) intending to lend money on the security of the goods, know that all they need do in the ordinary case is to check the registry for prior charges in order to protect themselves. If they choose to deal without checking for prior rights, they take the chance that they may lose out to them.

The act of retaking possession rescinds the contract unless the contract itself provides, expressly or impliedly, that the buyer is to be liable for any balance owing after a resale. Such an implication, favorable to the seller, has been made in the past where it was provided that the proceeds were to be applied to the original price. If the seller allows the buyer to retain possession after default, and continues to receive payments, the seller thereby waives the default, and cannot take possession without a prior demand for the balance due.

If the seller, after repossessing, intends to look to the buyer for any deficiency upon a resale, the seller must preserve the goods in just the condition in which they were when repossessed, not using them or allowing others to use them, neither repairing them nor permitting them to deteriorate through a lack of ordinary care and attention. In one case, a window of a car was accidentally broken during repossession. The seller was held to have lost his rights against the buyer when he failed, having knowledge of the condition of the window, to do anything to prevent weather damage to the inside of the car prior to attempting a resale.

Though the seller has a legal right to enter on premises to seize the goods, great care must be taken in doing so. It is illegal to use force, and an injunction may be granted restraining the seller from committing threatened acts of force, but the applicant may be put on terms not to interfere with the seller's rights. Where the buyer took the chattel sold to a boarding-house, the seller's act of pushing the landlady aside on making entry was held to be assault. It is often provided in contracts that the seller may on default break open doors and locks and otherwise enter by force to remove goods; but, such acts have been held to be "trespass" even though they are not "forcible entry" under the Criminal Code. If a bailiff or other employee of the seller in the course of removing a chattel by force assaults a person, the seller is liable in damages; for, though the bailiff is exceeding authority, the bailiff may be found to be acting within the scope of employment. In Alberta, seizure under a conditional sale agreement must be made by the bailiff.

There is no general power specified by the common law or by the statutes enabling the seller to resell the goods after repossession, nor is there any need for one. The seller may resell the goods simply because the seller is, and always has been, their owner. Under the typical conditional sale the seller merely parts with possession to the buyer, retaining the title as security. It is only when the seller seeks to charge the first buyer with any deficiency realized after the resale that the Conditional Sales Acts become involved. Then the seller must resell strictly in accordance with the

contract with the buyer. The Conditional Sales Act requires that the sale be not held sooner than a specified number of days after the seller has given the buyer notice of right of redemption and the sum required to free the goods of the seller's threatened execution. A failure by the seller to comply with these requirements does not invalidate the sale, but does free the buyer from liability to pay the deficiency. The buyer may also be freed if the seller, while complying literally with the letter of the law, violates its spirit by effecting resale at less than a fair market price for such goods sold in such circumstances.

A common clause to be found in conditional sales contracts directed toward protecting the seller from the accidental destruction of the goods and the loss of the property while it is in the hands of the buyer is thus one which provides that the risk of loss shall be on the buyer. In other contexts it has been decided that a promise by one party to insure the goods is an indication that that person has agreed to bear the risk of their loss. Conditional sales contracts often provide that the goods must be insured by the buyer for the benefit of the seller — where the goods are a new or used car being purchased by installments, this practice is mandatory.

The buyer has the right to possess and use the goods under the terms of his contract. If the buyer fails to make the payments, then the buyer loses this right and the seller may take back the goods. If financial difficulties make it impossible to meet the payments under a conditional sales contract, it is sometimes possible for the buyer to meet with the seller and arrange some alternative plan, such as a new contract with lower payments continuing for a longer period of time.

As well, by paying instalments on time a person establishes a good credit rating. This may be very important at a later date if the buyer should wish to obtain credit for some larger business transaction.

Until the buyer has fully paid for the goods and obtained the title to them, the buyer is expected to keep the goods in a suitable place. The buyer is guilty of theft if anything is doen to them which makes it impossible to restore them to their original condition, or gives them or sells them to someone else, or pledges them as security for a loan or a debt.

Bills of Sale

The piece of paper a buyer generally receives when making a purchase is a sales slip, sales ticket, or a receipt. The more formal bill of sale (often, but not necessarily, under seal, and always witnessed) is only required where the buyer needs official proof of ownership. This is generally the case only where the buyer leaves physical possession of the goods with the seller. Since this non-owning seller has been vested by the buyer with apparent ownership of the goods, the danger arises that the seller might try to sell or mortgage the goods to some third party. If this third party is not aware of these circumstances, he would obtain title to the goods, as against the first buyer. The province of Alberta has enacted legislation called the Bills of Sale Act which protects the non-possessing buyer and the true owner by requiring that:

1. The contract must be in writing and signed by the seller.

2. A copy of the contract must be registered in the Central Registry Office within 30 days and the registration must be renewed every three years.

3. The document must be accompanied by two affadavits:

   (a) an affadavit by a witness attesting to the proper execution of the bill of sale; and

   (b) an affadavit by the buyer, swearing that the goods were bought for genuine consideration and that the transaction was not entered into for the purpose of defeating the seller's creditors. By a mock sale to an obliging relative or friend, a person in financial difficulties could place beyond creditor's reach valuable goods which would otherwise be part of the debtor's estate or which are the subject of a court order after losing a law suit.

Therefore, under the provisions of the Bills of Sale Act, a person who buys from the apparent owner an article which has already been sold to somebody else, and against which a bill of sale has been properly registered, can be made to return it to its true owner, the first buyer. The only recourse would be to sue the apparent owner for damages for breach of the implied condition given of having the right to sell the goods.

If a bill of sale is issued to transfer temporary ownership of goods by way of security for a loan, the courts will regard the transaction as a chattel mortgage.

Example of a Bill of Sale

I, _____(Name)_____, of _____(City, Province)_____

hereby acknowledge that I am the owner of the following goods:

_____(Describe in Detail)_____ and

that they are free from any encumbrances, and that I am free to sell them.

In consideration of _____ dollars received

by me from _____(Name)_____, I hereby grant delivery and

transfer of these goods to _____(Name)_____

These goods shall be the property of _____(Name)_____

for his/her own use forever.

Date:

_____(Signature)_____

Chattel Mortgages

A chattel mortgage is a document given by a borrower (mortgagor) to a lender (mortgagee) which transfers temporary ownership of goods to the mortgagee as security, until the loan is repaid. The mortgagor usually assumes physical possession and use of the goods and is thus their apparent owner. To afford protection to the mortgagee against someone who might purchase the goods from the mortgagor without knowledge of the mortgage, the mortgagee must go through exactly the same registration procedure as the buyer under a bill of sale.

The clauses of a chattel mortgage are essentially the same as the ones in a conditional sales contract. The debtor agrees to make certain payments; and the creditor has the right, in case of nonpayment, to enter on the debtor's premises with the aid of the sheriff, to seize the goods, to sell them, and to sue the debtor for any deficiency. However, the debtor must be given a reasonable opportunity to redeem the goods. Further, the debtor can be sued for any deficiency resulting from the sale. On the other hand, the mortgagor is automatically entitled to any excess resulting from the sale.

Chattel mortgages are frequently issued as security for loans; they are also used to finance credit purchases. The car, appliance, furniture, etc. is sold to the buyer outright and a chattel mortgage is drawn up in favor of the seller. The chattel mortgage generally covers not only the goods which have just been bought, but practically everything else the debtor owns. Anything that can be validly sold may be mortgaged; but, there are two classes of things a mortgage of which would be void: (1) things prohibited by statute to be mortgaged; (2) things the mortgaging of which would be an infringement on the rights of other creditors.

In Alberta, a mortgage upon growing crops is prohibited unless as security for the price of meat, groceries, flour, clothing, binder-twine, money borrowed for repairs to machinery or for payment of wages in sowing and harvesting such crop, which are called *necessaries.* Security given for seed grain has priority over all other mortgages or charges, and those given for necessaries over all other mortgages except those given for seed grain, and both have priority over a landlord's claims.

Mortgagees are allowed to sell (assign) their mortgages without the debtor's consent. In fact, it is standard practice for merchants who sell on a conditional sales basis and persons who grant credit against chattel mortgages to assign their claims to finance companies. For protection, the assignee should promptly register the assignment and notify the debtor of it.

Similarly, the mortgagor may assign the mortgaged goods; that is, sell the goods to a third party, subject to the mortgage. Popularly, this is called selling the equity in mortgaged goods or the mortgagor's beneficial interest in the goods. If the goods do not leave the mortgagor's physical possession, they can be sold without the mortgagee's consent; however, the terms of the mortgage will prohibit the removal of the goods without such consent. A third party, buying mortgaged goods, must continue the payments on them or face the possibility of their being seized. This third party will have to make these payments even if unaware of the mortgage, provided a search of the Registry Office would have revealed its existence.

Only under exceptional circumstances (if for instance, there is no market for the goods) will the Chattel Mortgage Act allow mortgagees to keep seized goods. They must sell them as advantageously as possible and, to ensure this, they must not buy the goods at a private sale themselves or through agents acting on their behalf. However, they are allowed to bid for the goods at a public sale.

When the debt has been paid the mortgage terms will entitle the mortgagor to either have the mortgage cancelled or to have ownership of the mortgaged goods retransferred. The creditor will also have to arrange for the mortgage registration to be cancelled or to supply the mortgagor with a certificate of discharge. An important point regarding registrations should be noted here. If a borrower mortgages property to several different persons, the one who registers the claim first has first claim against the property. For example, if debtor D borrows $500 on his car from A on Monday, $300 from B on Tuesday, and $100 from C on Wednesday, with each creditor being unaware of the other's claim; and if C registers his claim on Wednesday, while B delays doing so until Thursday, and A until Friday, then C will have his claim satisfied first. Thus, if the sale of the mortgaged car realized $350, C will get his $100, B will get $250, and A will be left with nothing.

The Bulk Sales Act

A bulk sale is a sale out of the usual course of a business where goods are bought and sold for profit, or, in the case of a farmer, where crops and livestock are produced and sold for profit. An example of a bulk sale is a sale in one transaction of the entire stock of goods by a merchant, or the sale by a farmer of all implements and livestock.

The merchant may owe money to some wholesale companies for goods purchased from them for resale, and the farmer may owe money to some implement companies for farm machinery. In the case of the merchant, the wholesale companies have very likely extended credit because the merchant has a good stock of goods and a thriving business. The implement companies have very likely extended credit to the farmer because the farmer has a good farm and a large herd of cattle.

Without some law to protect them, their creditors run the risk of the merchant or the farmer selling all goods without their knowledge and taking the money to put into something else, or paying a few creditors only and leaving some of them unpaid. They might find it difficult or impossible to get the money owing them.

Example

James Forbes owns a general store in a busy and prosperous community. He owes a number of bills to the wholesalers but his creditors are not worried because he has a good business and a good stock of merchandise. They know that if he does not pay they can have some of his merchandise seized and sold to pay their claims. However, Forbes sells his entire business secretly for cash, takes the money, and without paying any of his bills, leaves the country.

To prevent creditors from fraud and injustice, all bulk sales are governed by the Bulk Sales Act, a provincial statute. This Act requires that notice must be given to creditors a specified time in advance of the sale of an entire business. If the provisions of the Bulk Sales Act are observed, the buyer becomes the owner of the goods at the time the sales contract is made. The burden of complying with the Act is placed upon the buyer. Unless the buyer complies with the Act the sale is declared fraudulent and void; the creditors of the seller may seize the goods, have them sold, and take the money.

In Alberta, if the actual money obtained from the sale is not sufficient to pay all the creditors in full, the buyer must either obtain the consent or waiver of sixty per cent of the creditors holding claims of fifty dollars or more, or pay the whole of the purchase price to a trustee to be distributed among the creditors.

If the provisions of the Bulk Sales Act have not been complied with, the creditors must take the necessary legal action within six months from the date of the sale, or the sale is declared legal.

Other Contracts Distinguished from Sales

Barter

Barter is the exchange of one article of personal property for another article of personal property. It is the exchange of goods for other goods. As barter is not a sale of goods it does not come under the Sales of Goods Act.

Consignment

A sale of goods on consignment is where a shipment of goods is sent to an agent for sale. The person who ships the goods to the agent is called the consignor, and the agent is called the consignee. The goods are entrusted to the consignee but ownership of the goods does not pass. It is not a sale.

Work and Labour

A contract for work and labour is not the same as a contract for the sale of goods. For example, a person may see a cabinet in a furniture store and buy it. This is a contract for the sale of goods and it comes under the Sale of Goods Act.

On the other hand, a person may decide to supply all of the materials and have a cabinet of a certain style and size made by a cabinet maker. This would be a contract for labour as the cabinet maker would be supplying only the labour. Such a contract is called a contract for work and labour.

It is important to distinguish between a contract for the sale of goods and a contract for labour because some contracts for the sale of goods must be in writing to be enforceable, whereas contracts for labour as a general rule do not have to be in writing to be enforceable.

Sometimes the person who does the work on an article supplies a part or all of the material. Then the question arises as to whether or not the transaction comes under the Sale of Goods Act.

If the substance of the contract is for the exercise of skill and the delivery of goods is only secondary, there is not a sale of goods.

Example 1

A repairs a car for B and in doing so puts in several small new parts. B already owned the car. The work done on it by the mechanic did not substantially change the car. Such a contract would be a contract for work and labour. It would not come under the Sale of Goods Act. (B would probably be charged for the parts along with the work.)

Example 2

Brown, an upholsterer, contracts to make a chesterfield for Gray for a price of $300. Brown is to supply both the labour and the materials. Gray had never owned any of the materials before. Such a contract would be a contract for the sale of goods. It would come under the Sale of Goods Act, and as the price is over $50 the agreement would have to be in writing to be enforceable.

Consumer Tips on Contracts

1. Your signature costs you money. If you sign for something, you are expected to keep your agreement. If you fail to do so, provided there is no fraud or misrepresentation involved, which you can prove, you are liable to action for breaking your agreement.

2. Don't sign unless you intend to do what you agree to do.

3. Don't sign because of any verbal promise that the contract would be cancelled later upon request.

4. Be sure you understand the terms of the sales agreement before you sign it, and that everything you've agreed to pay for is specified in the contract.

5. You can save yourself from paying for things you do not receive by reading every sales, service, or work agreement before you sign it. Every such paper you sign is probably a contract. It usually binds both you and the seller to do certain things. Contracts can be long or short, but they don't have to look legal to be binding. Because most contracts are written to protect the seller, watch to see that the contract also protects you.

6. You or the seller are not bound by anything not in the contract, but everything that is written binds either you, or the seller, or both parties. Be sure that the contract tells you what the seller will do for you, as well as what you are to do. Generally, verbal representations do not count legally, once you sign a contract — unless they are in the contract. If they are important, have them written in the contract.

7. If a clause in the contract is not what you bargained for — cross it out if the seller will accept it that way — otherwise you don't have to sign.

8. Sometimes a salesperson will tell you "That's only there for special conditions," or "Pay no attention to that because we never enforce it," or "This clause doesn't apply to you." Don't accept this. The paper you sign is what counts.

9. Never sign a contract that is blank where the work to be done or the merchandise to be purchased or the price and terms will be filled in later. It's like signing a blank cheque. Wait until everything you want is specified in the contract before you sign it. Once you attach your signature, it is difficult to prove later that the paper was blank when signed.

Illustrative Cases

1. It is sometimes important to have written evidence of ownership. A "bill of sale" is a written statement indicating a sale of any kind. When buying goods of value, it is always well for the buyer to get a written statement showing that the seller is transferring ownership.

   Edgar, having made a bad investment in mining shares, found it necessary to cut down expenses and raise some money. Accordingly he sold his car to his friend, Fornier, for $1,500 cash. Knowing that Edgar really needed the car for about three weeks in order to wind up his business, Fornier, as a favor to his friend, allowed Edgar to retain possession of the car for three weeks. Two days after they had made the agreement and Fornier had paid Edgar, Kemp a creditor of Edgar's, who had obtained a judgment against Edgar, seized the car to satisfy the judgment. Fornier took action against Kemp to obtain possession of the car. The court held that Fornier, being unable to produce a bill of sale or other written evidence of ownership, did not have a clear title to the car, and that Kemp was under no obligation to Fornier. Kemp was able to take the car.

2. It is also well for the seller to have a written agreement when selling something of value.

   Edge ordered a set of wrought iron garden furniture valued at $940 from the Xi Alpha Iron Works. He did not make a down payment but agreed to pay for it when it was completed. When Edge inspected the finished pieces he refused to take delivery of them on the grounds that the chair design was not what he had in mind and that the table was not equipped with castors to facilitate moving it about. Xi Alpha Iron Works sued Edge. The court held that the absence of a written memorandum made the contract unenforceable. Edge did not have to take the furniture, or pay for it.

3. If the seller has no title to the goods sold, then the seller is liable in damages to the buyer.

   Flett bought a cultivator from George and used it for four months. Later Flett discovered that George had no title to the cultivator and as a result he had to surrender it to Baker, the rightful owner. Flett sued to recover the total price he had paid George. The court ruled that Flett was entitled to recover the price in full, notwithstanding the fact that he had had the use of the cultivator for four months.

4. What the buyer accepts, the buyer must pay for. If either by error in delivery or in any other way a person receives goods not ordered, the person is under no obligation to keep or pay for them. However, if the person does any act that can be interpreted as an act of ownership, the individual is liable for the purchase price.

   Glenn received some building materials, with an invoice attached, from the Otter Lumber Company, although he had not ordered them. He used the materials to repair his garden fence. He refused to pay for them on the grounds that he did not order them, and the company sued for payment. The court held that as he had used the materials as if they were his own, he must pay the Otter Lumber Company for them.

Exercise 1

1. Property is divided into two main classes:

   (a) _____

   (b) _____

2. Define a contract of sale.

   _____

   _____

   _____

3. Why does a contract of barter not fall within the scope of the Sale of Goods Act?

   _____

   _____

   _____

4. How does a sale differ from an agreement to sell?

   _____

   _____

   _____

5. What is a consignment?

   _____

   _____

   _____

6. When does title pass under the Sale of Goods Act?

   _____

   _____

7. When does title pass under a Conditional Sale Contract?

   _____

   _____

8. Under what circumstances can a seller recover the goods sold even though the title has already passed to the buyer?

_____

_____

_____

9. What remedies does the Sale of Goods Act allow if the buyer fails to pay or refuses to accept delivery?

_____

_____

_____

10. If goods are ordered by description or sample or both, and do not correspond with the description or sample, the goods may be

_____

_____

_____

11. What is the difference between a breach of condition and a breach of warranty?

_____

_____

_____

_____

_____

12. What does the Latin phrase "caveat emptor" mean?

13. What is the seller's purpose of inserting an "excuplatory clause" into a contract of sale?

14. Using one of *your own* examples, show how a contract may be void by impossibility of performance.

15. Why does the buyer of stolen goods acquire no title to them?

16. After taking delivery of goods, does the purchaser still have a right to reject the goods? Explain.

17. What is a chattel?

18. The Conditional Sales Act is designed to accomplish what primary objective?

_____

_____

_____

_____

19. Would the following contracts come under the Sale of Goods Act? Explain in each case.

(a) A contract to shovel snow?

_____

_____

(b) A contract to sell Christmas decorations on a consignment basis?

_____

_____

Exercise 2

In the space provided at the left put the letter of the term which corresponds with the statement. There are more terms than you will need.

A. ascertained goods
B. absolute sale
C. agreement to sell
D. barter
E. bill of sale
F. chattel
G. c.i.f. contract
H. consignment
I. consignor
J. f.o.b. contract
K. ownership
L. real property
M. sale
N. tangible personal property
O. title
P. unascertained goods

_____ 1. Another name for personal property.

_____ 2. Something that you can touch and put your hands on, but it is not money.

_____ 3. A person who ships goods to his agent.

_____ 4. A sale where, as a rule, the buyer acquires ownership of the goods at the time of the sale.

_____ 5. Goods defined by description only, such as a sale of a quantity of goods out of a larger quantity.

_____ 6. The seller agrees to transfer at somne future time the title of goods for a money consideration called a price.

_____ 7. It means possession and conveys certain other rights.

_____ 8. Land and anything affixed to land, either naturally or artifically.

_____ 9. Goods are exchanged for other goods.

_____ 10. Technically it is the means by which ownership iis proved, but in the ordinary use of the word, it means the same thing as ownership.

_____ 11. Articles which have been identified and set aside specifically for the buyer.

_____ 12. The seller transfers to the buyer the title to goods for a money consideration called the price.

_____ 13. A contract whereby the seller is to bear the cost of delivery of goods to a specified shipping point.

_____ 14. A shipment of goods sent to an agent for sale.

Exercise 3

Below is a list of contracts. If the agreement is one that comes under the Sale of Goods Act, put A in the space at the left; if it is one that does not come under the Sale of Goods Act, put B in the space at the left.

_____ 1. A shipment of goods on consignment

_____ 2. A contract for work and labour

_____ 3. A contract for the sale of land

_____ 4. Good sold by sample

_____ 5. A contract of barter

_____ 6. Goods which have been definitely selected and set aside for the buyer.

_____ 7. A contract for the sale of specific goods

_____ 8. An exchange of goods for other goods

Exercise 4

Choose the best answer for each of the following statements or definitions and write the word(s) of your choice in the space provided at the left. The first one is done for you.

contracts 0. The law regarding the sale of goods is a branch of the law of (torts, contracts).

_____ 1. Title means (ownership, possession).

_____ 2. A bill of sale is a written statement showing that the seller (is, is not) transferring ownership to the buyer.

_____ 3. Barter is the exchange of goods for (money, goods).

_____ 4. Under (an f.o.b., a c.i.f.) contract the seller bears the cost of delivery to a specified shipping point.

_____ 5. A sale on consignment (is, is not) a sale under the Sale of Goods Act.

_____ 6. Personal property is sometimes called (liens, chattels).

_____ 7. The Sale of Goods Act provides that in the (absence, presence) of an agreement between buyer and seller, payment must be made at the time the goods are delivered.

_____ 8. Timber which has been cut or severed from the land is (real, personal) property.

_____ 9. A sale where the buyer acquired ownership of the goods at the time of the sale is covered by the (Sale of Goods, Conditional Sales) Act.

_____ 10. Laws governing the sale of goods (do, do not) apply to real property.

_____ 11. Under an f.o.b. contract, when once the goods are shipped they are at the risk of the (buyer, seller).

_____ 12. (An f.o.b., A c.i.f.) contract is convenient for a person buying goods from another country.

_____ 13. If the title to goods has not passed from the seller to the buyer, then the buyer (can, cannot) pass the title to the goods to someone else.

_____ 14. Every purchase of goods (does not, does) involve a contract of sale.

_____ 15. A sale of a complete stock of goods or equipment is covered by the (Bills of Sale, Bulk Sales) Act.

_____ 16. Ascertained goods (are, are not) also called specific goods.

_____ 17. If the substance of an agreement is for the exercise of a skill and the delivery of goods is only secondary, there (is, is not) a sale under the Sale of Goods Act.

Exercise 5

In each of the following cases, give your decision based upon the legal principles contained in this lesson. An answer is of no value unless accompanied by an explanation.

1. On June 1st Kelly bought a refrigerator from Laschuk promising to pay for it on June 30th. By agreement, title and possession of the refrigerator passed to Kelly on June 1st when the contract was made. The refrigerator was delivered on June 2nd, and on June 15th Kelly sold the refrigerator to Jensen who paid Kelly for it. Jensen immediately took possession of it. Kelly failed to pay Laschuk at the end of June. Laschuk then tried to get the refrigerator back from Jensen, claiming that since Kelly had not paid for it, it now belonged to him. Is Laschuk correct?

_____

_____

_____

_____

_____

_____

_____

2. Hancock agrees to build a boat for Finlay for a price of $900. Finlay is to supply the materials and Hancock is to supply the labour. Is a written agreement or one of the other conditions necessary in order to make this contract binding?

3. On August 1st Cartier agrees to sell Murray his bicycle at the end of the month. Murray is to have possession and ownership when he pays Cartier on August 31st. On August 10th Cartier's garage burns down and the bicycle is destroyed in the fire. Cartier insists the loss is Murray's and that Murray should pay him the price they had agreed on at the beginning of the month. Is Cartier right?

4. A new stereo purchased by Art Walker has a defective speaker. This amounted to a breach of warranty. Can he repudiate the contract and get his money back?

5. Mrs. Clarke was surprised when the baker delivered a chocolate cake to her house as she had not ordered it, but as she was having some ladies in for a game of bridge that afternoon she served them the cake. Later when the baker came to collect the money for the cake, Mrs. Clarke refused to pay because she had not ordered it. Will Mrs. Clarke have to pay for the cake?

6. Bob Burns ordered twelve quarts of paint from the Colour-Fast Paint Store. Fifteen quarts were delivered. Does Bob have to accept and pay for the three extra quarts? _____ May he keep them if he wants to? _____ If he keeps them how much will he have to pay?

7. Parker purchased from North a quantity of lumber that was piled in North's lumberyard. Later Parker found that the boards were not so straight or free from knots as he had thought. Did he have any claim against North?

8. Jones orders a ventilating fan from Brown to air a certain room. Brown agrees to furnish such a fan. Instead, he sends Jones a fan which does not adequately ventilate the room Jones had in mind. Must Jones accept the fan?

9. George buys a piano on a conditional sales agreement. After making a few payments, he sells it to his friend Harry, at a loss, for cash. George makes no further payments on the piano. What can the piano company do about it?

END OF LESSON 14

LESSON RECORD FORM

3430 Law 30
Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____

Correspondence Teacher

St Serv 1-86

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.**

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

THE MARKETPLACE

Every one of us is a consumer — from a four-year-old purchasing a chocolate bar to the millionaire buying a Rolls Royce. We must all obtain from others our daily needs such as food, clothing and shelter. Years ago, that was a simple process. When Canada was a largely rural country, the consumer knew who produced the goods that were bought. For example, if meat was bad, the housewife knew the local butcher was likely responsible. Not only were producers close by, there was usually a friendly, neighbourly relationship between them and their customers.

But what of today, when often the goods we buy are made or processed in distant parts of the country or even abroad? Who do consumers turn to if they feel they have been cheated and businesses are not responding? Who protects consumers from defects in the vast array of goods and services being offered? It is the intent of this lesson to provide the answers to these questions.

Let us begin by asserting that many governmental departments have developed legislation designed to protect buyers in the marketplace. These laws have been developed to protect what has come to be identified as the four basic rights of consumers: *the right to be heard; the right to safety; the right to be informed; and the right to choose.*

The laws which directly or indirectly affect the consumer marketplace have increased in number in recent times, especially since World War II. While laws relating to the consumer marketplace can be traced back well into history, their number and complex nature have never approached that of today. In recent times we have seen a particular growth in what are called consumer protection laws. In general, the aim of these laws has been to ensure or protect consumer's rights in the marketplace in the face of an array of deceptive or complicated merchandising practices which may act to the general detriment of the consumer. Examples of these laws are found at both the federal and provincial level, and include: packaging and labelling legislation, product standards legislation, and credit transaction legislation.

The influence of all levels of government has been considerable in affecting consumer-seller transactions. The bureaucracies of all levels of government have grown with new legislation, to influence almost all phases of any given transaction. For instance, at the municipal level, all businesses within any given jurisdiction must be licensed to carry out that particular trade or service. At the provincial level, there are also a number of licensing agencies for particular businesses; and in turn there are a number of agencies through which the consumer can expect protection or turn to for help. At the federal level, example areas of regulation and agencies include those over bankruptcy, weights and measures, and product labelling.

Perhaps one of the most striking components in the complexity of the present consumer marketplace is that of the number of individuals or businesses who are now involved in all forms of transactions. No longer is the system primarily that of producer-manufacturer, seller, and buyer; a wide number of intermediaries are now involved. This is due, in part, to the fact that many consumer products are made up of hundreds of parts which may have been in turn manufactured by dozens of different submanufacturers. The mechanism for handling and delivery of the product to the consumer has also become more complex. In between the manufacturer and

the retailer, there may be brokers, importers, wholesalers, distributors, as well as a wide number of transportation systems. There may also be a need for installation services, repair services, and financial credit services. To protect themselves in this complex and confusing system, consumers must be educated and ever vigilant.

FEDERAL LEGISLATION AND ORGANIZATIONS

The main government body charged with the duty to oversee and protect consumer rights in Canada is the Federal Department of Consumer and Corporate Affairs. This department came into being in December of 1967 under the Department of Consumer and Corporate Affairs Act. Section 5 of the Act outlines the duties, powers and functions of the Department, generally, and includes such matters as:

1. consumer affairs;
2. corporate securities;
3. combines;
4. bankruptcy;
5. patents and copyrights;
6. standards of identity and performance.

Section 6 of the Act specifically outlines the duties of the Minister regarding consumer affairs, which include:

1. understanding consumer-related programs;
2. coordinating government programs to promote the interest of the consumer;
3. and to undertake programs to assist and inform the Canadian consumer.

The Department is composed of four separate divisions or bureaus. The Bureau of Consumer Affairs coordinates government activities in the consumer affairs field, and has within it a Research Branch, a Consumer Services Branch, and a Consumer Standards Directorate. The most predominant of the three branches is the Consumer Services Branch, which has under its control the operation of Box 99, which is the consumer complaint address for the department. This simple mailing address is also used by consumers to obtain information concerning federal programs for consumers.

The Department administers several statutes which are of primary concern to consumers. We will look briefly at some of the more important pieces of consumer legislation.

The Consumer Packaging and Labelling Act

This Act has a number of specific provisions which are beneficial to consumers. These include restrictions regarding importation of products without certain labelling standards being met, and directives on certain minimal information which must be contained on any "prepackaged product." In this regard, the Act is tied into certain specifications of the Weights and Measures Act. The Act also allows for regulations to set minimum standards of net quantity inside a product package. Lastly, the Act allows the government to make regulations regarding the size and shape of containers of prepackaged products where it is deemed that the proliferation of such shapes or sizes of a given prepackaged product is likely to confuse the consumer.

Packaging

When all detergents are virtually the same and the same price, the choice comes down to the package. As a result, market analysis, advertisers and artists rack their brains to come up with the most attractive and appealing way to present their product. One result of this competition is that packages of detergents and cereals, among other products, are often somewhat larger than the contents require. The empty space in the package or jar is known as "headroom." Fraudulent misrepresentation, or deceiving the customer, is against the law. When headroom is noticeable, the manufacturer usually justifies it by stating on the package, "As a result of handling, settling of the contents may result," or words to that effect. You will find also, that the weight and/or volume of the contents will be clearly stated on any package. You are better off to consider price by unit of weight rather than by the package.

If you paid a high price for a big package on the assumption that it contained a large quantity of the desired product, and then found that it was half empty, and the label did not state the volume of contents or warn of settling, you could accuse the manufacturer of fraudulent misrepresentation. You would need only to prove that the actual quantity of product inside the package was not worth the price paid, presumably, by quoting as evidence the usual price of the commodity elsewhere.

Accurate Labelling

The law considers misbranding, or incorrect labelling, an offence. The buyer must not be misled by the words or symbols on the label about the character, strength, quality or quantity of an article. With packaged foods, the label must state the name and address of the manufacturer, the names of all the ingredients in descending order of quantity, the net weight of the contents, and the presence of any added color or preservative. The Consumer Affairs Bureau enforces product-dating for goods with a normal shelf life of up to six months. The date indicates the very last day on which the item may remain on sale.

In the case of patent medicines, those brand-name drug products available without a doctor's prescription, the labels must reveal the presence, as well as the quantity, of all chemical compounds. This permits you the consumer to compare the strengths of the various pharmaceutical ingredients as well as the possibility that you may be allergic to a certain ingredient in the medicine. The label will thus warn you of this possibility.

Goods Under Cellophane

Consumer rights groups have been alert to ensure that the widespread use of cellophane or other plastic wrappings does not create its own kind of misrepresentation in food packaging. Although the transparency of the wrapper certainly allows shoppers selecting the family's meat to see what they are buying, a few over-eager or unscrupulous packers arrange the slices to conceal fat, giving the impression that the cellophane wrapped package is all meat. The fattier hamburger meat can possibly be passed off as ground round steak when the package looks so fresh and appealing. There is no specific regulation forbidding this practice in Canada, but the pressure of consumer opinion appears to curb it sufficiently.

Our public health statutes of cleanliness exercise strict control wherever raw meat, or other raw foods, are prepared. Canadian tourists in Europe and Asia are often shocked to see carcasses hanging inside and outside butcher shops, attracting flies and gathering street dust and fumes. Our laws forbid street display of meat and demand sanitary conditions as well as refrigeration; in this endeavor, cellophane and other wraps play an important role in keeping foods free from impurities and from early spoiling. One last point, it is illegal in Canada to use chemicals to enhance the color of meat. While there is no specific regulation concerning the use of lights — there are lamps, for instance, which produce a red glow — a possible charge of fraudulent misrepresentation tends to discourage stores from their use.

The Textile Labelling Act

This Act is very simple, and sets only a few provisions. Dealers are restricted from selling or importing consumer textiles in Canada without the prescribed labelling; and false or misleading labelling is made an offence. The main provision of the Act states that the labels must give the generic name of each textile fibre comprising five percent or more by weight of the total fibre weight of the item, the identity of the manufacturer, and how the label must be affixed.

The Weights and Measures Act

Specific control over weights and measures is given to the federal government under the B.N.A. Act. The regulations contained in the Act are a very detailed set of standards for general consumer protection in the marketplace. They cover everything from weigh scales used by your local grocery store, to gas station pump meters, to prescribed tolerances for metals or declared weights for a wide range of consumer products. Naturally, legislation such as the Weights and Measures Act requires continual updating in order to keep up with standards for new products which are being developed.

Food and Drugs Act

In general, this Act is intended to protect consumers from health injuries, fraud, and other deceptive practices related to food and drugs. An instance of how the consumer is protected from potentially fraudulent advertising of food or drug products is the fact that certain medical disorders cannot have products advertised which claim to cure them. For example, it cannot be claimed any product will cure cancer, rheumatoid arthritis, tuberculosis, or alcholism. Basic to the Act is the fact that food products cannot be sold which:

(a) contain poisonous or harmful substances;
(b) are unfit for human consumption;
(c) are adulterated (impure);
(d) were manufactured or developed in unsanitary conditons;
(e) or which in whole or in part contain any putrid or other undesirable substance.

It is illegal under all public health legislation to add any foreign material to food substances either to lower quality or to substitute one ingredient for another. Severe penalties, including large fines or imprisonment are imposed by the Food and Drugs Act for the presence of any rotten, filthy, putrid, decomposed or diseased animal or vegetable substance in a food or drug product.

Separate parliamentary acts set out national standards for the quality and packaging of fish and related products, grains, eggs, honey, cheese and maple-sugar products prepared for the interprovincial and export market. The provinces have similar legislation to ensure nationwide standards of quality. The various laws are administered by the Food and Drug Directorate of the Department of National Health and Welfare, and the Departments of Agriculture, Fisheries, and Trade and Commerce. All of these departments work in cooperation with the Consumer Affairs Bureau of the Department of Consumer and Corporate Affairs.

The same provisions for food generally apply for drugs as well. A section in the Act deals with restricted drugs. This section defines restricted products, and sets penalties for their possession and trafficking.

When a new drug is placed on the market, the manufacturer must supply detailed information to the Department of National Health and Welfare. Careful watch is kept over the drug for any unexpected side-effects. Methods exist for the speedy removal of any product from the drugstores at any time.

The administration of the Food and Drugs Act and its regulations is divided between the Health Protection Branch of the Department of National Health and Welfare, and the Department of Consumer and Corporate Affairs. In general, the Health and Welfare Department is concerned with the potential health hazard of certain products, packaging and labelling of drugs, and sanitation; while the Department of Consumer and Corporate Affairs is concerned with packaging and labelling provisions and misleading advertising of food products.

The Motor Vehicle Safety Act

The automobile is one product which has potentially high risks for consumers. The hazards of car ownership include such such as cost, complexity, and safety. While there are a number of provincial statutes which directly and indirectly affect automobile purchases, operation, and road licensing, the federal Motor Vehicle Safety Act deals mainly with the subject as implied in the title — namely safety and construction standards of the vehicle. The basic statute itself is very simple, and leaves the technical details with regards to specifications and standards to an ongoing and periodically updated set of regulations. The Act itself makes two main points: it can prescribe safety standards for motor vehicles of prescribed classes and their components; and it sets standards for importation of motor vehicles into Canada. The Act sets penalties for violation of these sections. The Act also specifically sets out conditions for sending notice of defect and recall to consumers for defective parts of the automobile. In general, the safety regulations and standards under the Act cover almost all vehicles, including passenger cars, trucks, motorcycles, snowmobiles and trailers. The Act is administered by the Road and Vehicle Traffic Safety Branch of the Ministry of Transport.

The Hazardous Products Act

The Hazardous Products Act deals with what might be referred to in general terms as consumer goods and makes specific mention of such product categories as those designed for household, garden, or personal use, for use in sports or recreational activities, or for use by children. It also includes poisonous, toxic, flammable, explosive and corrosive products.

The Minister of Consumer and Corporate Affairs is empowered by the Act to require disclosure of information in the possession of the manufacturer of any product within its control respecting the product's nature and composition. On the advice of the Minister, the Governor-in-General-in-Council may include in an amendment to the Act any such product thought to be, or likely to be, a danger to the health or safety of the public. It is unlawful to advertise, sell, or import into Canada any product designated by the Act as dangerous.

Inspectors are appointed under the Act by the Minister and these inspectors have powers of search and seizure. Thus, a hazardous products inspector may enter, at any reasonable time, any place where it is reasonably believed a hazardous product is being manufactured, prepared, preserved, packaged, sold or stored for sale. Inspectors may examine any records, books or other documents believed to contain information relevant to the enforcement of the Act. Products found to be in contravention of the Act or regulations may be seized.

The Combines Investigation Act

While Canadians enjoy freedom of expression, which includes freedom of the press, it is unlikely that any government agency will attempt to censor or regulate the content of advertisements in any over-all fashion. But there are some specific controls: (1) over the advertising of certain classes of food and drug products; (2) over political appeals; and (3) over certain types of broadcasting material. Any advertiser attempting to mislead the consumer is dissuaded by two sections of the federal Combines Investigations Act.

Section 36 of the Act states that it is an offence for someone, in order to promote the sale or use of an article, to mislead the public concerning its regular or ordinary selling price. This will make a merchant think twice before, say, increasing the regular price of an article, then lowering it and advertising it as a bargain.

Section 37 of the Act states that it is illegal to publish an advertisement which either contains a statement that is false, deceptive or misleading, or is intentionally worded so that it deceives or misleads the public. The penalty for this offence can be as much as five years' imprisonment. It applies especially to the sale of real estate and to the promotion of any business or commercial interest. Newspapers, magazines, television stations and other publishers are not held responsible if they have accepted and published the offending advertisement in good faith. Nor is an advertising company penalized if it receives information in good faith from the manufacturer.

Under Section 37 it is also illegal for the manufacturer to publish a statement about the performance, effectiveness, or long-lasting qualities of a product unless the manufacturer has made adequate and proper tests of the item. In other words, it is up to the manufacturer to back up any claims made. The Act defines an acceptable test as one made by the National Research Council of Canada, or by some other public department.

It is the duty of the Director of Investigation and Research to undertake an inquiry whenever there is reason to believe that any of the provisions of the Combines Investigations Act have been or are about to be violated. Incoming complaints alleging misleading advertising or other information are examined in relation to sections 36 and 37 by the Misleading Advertising Division, and where it appears that commitment of the necessary resources is justified, the matter is assigned for investigation. Since the Combines Investigation Act is criminal law, each element in a charge laid under it must be proven beyond a reasonable doubt. Consequently, a very careful investigation must be undertaken and may consume many man-hours.

Staff resources which can be made available to investigate complaints are not unlimited. In order to meet the objectives of bringing about an overall improvement in the quality of market information directed to consumers, it is necessary to select cases which are most likely to contribute to the objectives sought by the legislation. The principles followed in assessing the priority of complaints include the degree of coverage of the advertisement, the impact of the advertisement on the public, the deterrent effect of a successful prosecution, and the selection of the best cases to allow the courts to establish new principles and clarify the law.

In most cases, it is not necessary for complainants to become involved in prosecutions as witnesses. In addition, complainants should realize that the Combines Investigation Act does not refer authority upon the Director to intervene on their behalf in particular circumstances. Consumers who have made purchases or commitment based on a misleading advertisement should be aware that a criminal investigation and prosecution including one made under the Combines Investigation Act cannot be expected to bring direct help to an individual. An investigation by the Director of a situation in which the question of misleading advertising has been raised proceeds independently of any action which may be taken by consumers themselves.

Since the Combines Investigation Act provides that inquiries, except in specified circumstances, are to be conducted in private, the Director is not at liberty to issue "progress reports" during an investigation of a particular matter. Moreover, the very large number of complaints dealt with has made it impractical to advise complainants individually of the final result in each case. Therefore, summaries of prosecutions are prepared from time to time and any person wishing to obtain them may do so by writing to the Information Branch of this Department.

Proceedings in the courts and other publicity arising out of enforcement action against misleading advertising, have brought to the attention of the business community the need for improved advertising practices. Frequently, advertisers seek the Director's views respecting intended advertising promotions. While the Director has no power to approve, reject or issue any other binding ruling concerning an advertisement, the Director is prepared to say whether on the basis of the facts given, publication of a proposed advertisement might give authorities reason to believe that a violation of the Act had occurred. Such consultation often prevents violations that might otherwise occur.

The Twelve Rules for Ethical Advertisements

Advertising is always open to attack because it is not only a work of fact, but also of the imagination. "Creative" advertising people are the ones who star in the skyscraper success stories, not the plodders who faithfully list the low, low price of potatoes.

The major Canadian advertising agencies are well aware of the existence of a "credibility gap" with the consumer and, through the Canadian Advertising Advisory Board, they have proclaimed the Code of Ethics which is reprinted here in full:

- No advertisement shall be prepared, or knowingly accepted, which contains false, misleading, unwarranted, or exaggerated claims — either directly or by implication. Advertisers and advertising agencies must be prepared to substantiate their claims.

- No advertisement shall be prepared, or be knowingly accepted, which is vulgar, suggestive, or in any way offensive to public decency.

- No advertisement shall be prepared, or be knowingly accepted, which is calculated to exploit the superstitions, to play on fears, and mislead the consumer into the purchase of the advertised commodity or service.

- No advertisement shall be prepared or be knowingly accepted, which offers false hope in the form of a cure or relief for the mentally or physically handicapped, either on a temporary or permanent basis.

- No advertisement shall be prepared, or be knowingly accepted which makes misleading or inaccurate presentations of actual and comparative prices.

- No advertisement shall be prepared or be knowingly accepted, which contains false or misleading testimonials, or which does not reflect the real choice of the person giving the testimonial. Advertisers and agencies must be prepared to produce evidence in support of the claims made in any testimonial advertisement.

- No advertisement shall be prepared, or be knowingly accepted, which unfairly disparages products or services of other advertisers. Substantiation is always required when comparisons are made with competing products or services.

- No advertisement shall be prepared or be knowingly accepted, which distorts the true meaning of statements made by professionals or scientific authorities. Advertising claims should not be made to appear to have a scientific basis they do not truly possess. Scientific terms, technical quotations, etc. should be used in general advertising only with a full sense of responsibility to the lay public.

- No advertisement shall be prepared or be knowingly accepted, offering a guarantee or warranty, unless the guarantee or warranty is fully explained as to the name of the guarantor or warrantor, conditions and limits, or it is indicated where such information can be obtained.

- No advertisement shall be prepared or be knowingly accepted, which deliberately imitates the copy, slogans, or illustrations of other advertisers and is apt to mislead the consumer.

- No advertisement shall be prepared, or be knowingly accepted, which does not give the consumer a fair opportunity to purchase the goods or services advertised at the terms or prices represented.

Other Legislation of Importanceto Consumers

Control of Perishable Products

Provincial laws demand the proper care of perishable foods when they are in storage or for sale in store premises. Persons who handle food must be specially careful of cleanliness and health. Inspectors check commercial premises where food is kept and can order the premises closed, as well as confiscate the food, until conditions are corrected. They can take legal action which can result in stiff fines.

The building or place where food is sold is also subject to government specifications which call for proper ventilation, separate construction of washrooms, provision of hot water and towels.

Employees in food industries can also be subjected to periodic inspection for contagious diseases, such as tuberculosis.

Inspectors from various government departments — about six separate federal departments as well as provincial officials are involved — can descend on slaughterhouses, grading stations and retail outlets to check the quality and wholesomeness of food offered for sale. If you are dissatisfied with the quality of any food you buy, the Canadian Association of Consumers, your provincial consumer agency (or Public Health authority), or the federal Consumer Affairs Bureau would like to hear from you.

Inspection of Imports

Officers of the customs branch of the Department of National Revenue, Customs and Excise work hard to protect you from any harm resulting from imported goods. All goods entering Canada must be brought in at a port of entry — any place with a customs house. The importer must declare the quality, type and value of the goods.

Apart from figuring out the duty, the customs officer checks goods intended for sale to ensure they are of "merchantable quality" — that is, reasonably fit and safe for the purpose for which they are intended.

Labels must bear "a true and correct description of the contents." Officers check foodstuffs with particular care.

The customs officer is an expert at ferreting out illegal imports — such as marijuana and other illegal drugs — and severe penalties await anyone foolish enough to test his efficiency or dedication.

Spraying of Crops

Both federal and provincial governments have passed legislation forcing farmers to control certain pests. The poisons used must all be approved under the Pest Control Products Act. As knowledge and experience expand, the use of some poisons has been limited and, in some cases, banned.

The consumer must also be careful in preparing food. The government cannot be in the nation's kitchens, and the consumer is expected to know that fruits and vegetables are often sprayed with chemicals in order to control pests and plant diseases. These foods should be washed as a normal part of preparing them for the table.

Inspection of Restaurants

The federal Food and Drugs Act forbids the sale of food that is unfit for human consumption or was manufactured or prepared under unsanitary conditions: This Act gives government inspectors the authority to enter any establishment at any reasonable time and remove food that they think is bad. They also have the power to close any establishment that doesn't meet acceptable standards. Provincial laws directly control standards in restaurants, hotel dining rooms and cafeterias.

It is difficult to obtain a license for a restaurant. There are standards for the construction of the building which houses the restaurant, cleanliness of the employees, sanitary conditions where the food is being prepared, amount of ventilation, provision of washrooms and equipment for disinfecting utensils. If any of these requirements is not met, the province can refuse a license to serve food, or it can cancel an existing license.

Inspection of Factories

Public health inspectors of the provincial governments regularly inspect food producing factories. Dairies, bakeries and slaughterhouses get particular attention. Everything must be clean and sanitary, the work force included. The inspectors carefully check facilities for refrigeration, sterilization and storage. The penalties are severe and firms can be warned, fined and even closed.

Working conditions in factories are inspected by officers of the provincial departments of labor. Apart from the basic purpose of making sure that factories are following the safety codes, the inspectors also see that the washroom facilities meet cleanliness standards — an important factor in consumer protection where food production is concerned.

The Unfair Trade Practices Act

This provincial Act is intended to prevent unfair business acts or practices which occur, and aid consumers in recovering any losses caused by these practices.

Suppliers have to keep to a reasonable standard of conduct when selling "goods" and "services." This standard can best be described as **truth-in-selling**.

Consumers benefit through improved trade information and so be in a better position to make an independent and rational choice. Business firms benefit because they do not have to compete against certain unfair business practices of their competitors.

In order to more easily understand the Unfair Trade Practices Act, you should become familiar with the meaning of the following terms.

Consumer Transaction - This means any sale, lease or other disposition of "goods" or "services" for money or money's worth. This even includes an award by chance, such as a lottery prize.

Consumer - A person who receives goods or services under a consumer transaction is a "consumer." This includes a guarantor (i.e. a person who guarantees the purchaser's payments), or a person who receives a gift.

Supplier - This definition includes all persons who manufacture, produce, distribute, advertise or sell "goods" or "services." A supplier is also any person who could receive money payable under the consumer transaction, for example, finance companies who buy conditional sales contracts from retailers.

Exception:
Suppliers who are in the publishing or broadcasting business are exempt if they accept an advertisement in good faith which unknowingly contravenes the Act.

Goods - Generally, anything which you can move or see and which is to be used by an individual for personal, family or household purposes falls within the meaning of "goods." It does not include real estate and houses. It does include things you buy and install in a house, such as a furnace or chandelier.

Services - The Act deals with four types of services. Included are services provided to maintain or repair goods or private dwellings. Commercial properties are **not** covered. This covers unscrupulous appliance repair companies, and high pressure home renovation companies.

Services provided to an individual involving the use of social, recreational or physical fitness facilities are covered. So, questionable dance studio promotions and so called health spa "specials" fall under the Act.

Moving, hauling and storage services such as household movers are covered, as are certain kinds of instructional or educational services. For example, the high pressure sale of business training with the promise of a job upon completion of the course when in fact no job is available, is not permitted under the Act.

The Act **does not** apply to services provided by domestics in private homes or to persons in casual employment.

The Act identifies three types of transactions which are so objectionable that a court may declare the entire transaction unfair and award damages for loss.

(a) The subjection of the consumer to undue pressure by a supplier to enter into a consumer transaction is an unfair practice.

Example:

The sale of a family burial plot and ornate casket to a widow as a result of persistent and undue pressure by a supplier who knows that her deceased husband is to be cremated is unfair.

(b) The entering into a consumer transaction by a supplier where
  (i) the consumer's ability was such that he/she was not reasonably able to understand the character or nature of that consumer transaction, and
  (ii) that supplier took unfair advantage of that consumer's inability to understand the character or nature of that consumer transaction is an unfair practice.

Example:

A door-to-door book salesman convinces an elderly person, who is unable to read or write English, to sign a "paper" which turns out to be a legal contract for a $500.00 set of English encyclopedias. In this case the consumer was unable to understand what the deal was about and the supplier took an unfair advantage.

(c) It is an unfair practice for a supplier to enter into a consumer transaction in circumstances where

(i) the supplier knew that there was a defect in the goods or that any or all of the services could not be provided,
(ii) the supplier knew that the consumer was not aware of, or could not reasonably become aware of, the defect in the goods or the fact that any or all of the services could not be provided, and
(iii) the defect in the goods or the failure to provide any or all of the services substantially impairs, or is likely to impair, substantially the benefit or benefits reasonably anticipated by that consumer transaction.

It is important to realize that all three elements must be present, that is, the supplier must know of the defect, and that the consumer could not reasonably discover it, and that the defect was so substantial that the consumer could not get the expected value from the goods or services.

Example:

A retailer becomes aware that a particular product has a serious structural defect. Rather than return it to the manufacturer he continues to sell it without advising purchasers of the defect. The product becomes unusable after being used just a few times because of the defect.

The Act covers **any** representation or conduct which deceives or misleads consumers. It is designed to prevent unfair business practices before consumers are hurt. Following are examples of such practices.

1. A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have.

   Example:

   It is contrary to the Act to advertise that a kettle can boil water in two minutes when it really takes seven minutes.

2. A representation that suppliers have a sponsorship, approval, status, affiliation or connection that they do not have.

   Example:

   A business cannot say it is an "approved dealer" or "factory outlet" if the statement is untrue.

3. A representation that the goods are of a particular standard, quality, grade, style or model if they are not.

   Example:

   Advertising Grade C apples as Grade A is not permitted.

4. A representation that the goods have been used to an extent that is different from the fact.

   Example:

   It is not permitted to represent a used washing machine as having been used by a family of four, if in fact it had been used in a boarding house.

5. A representation that the goods are new if they are not.

   Example:

   It is unfair to sell as "new" an appliance that has been used as demonstrator.

6. A representation that the goods are new if they are deteriorated, altered, reconditioned or reclaimed.

   Example:

   It is not permitted to sell a reconditioned vacuum cleaner as "new."

7. A representation that the goods have particular prior history or usage if they have not.

   Example:

   A dealer saying a car was used as an executive company car when in fact it had been a lease vehicle.

8. A representation that the goods or services are available for a reason that is different from the fact.

   Example:

   Claims of "fire sale" or "going out of business" when these circumstances are not true, are unfair and not permitted under the Act.

9. A representation that the goods or services have been made available in accordance with a previous representation if they have not.

   Example:

   The advertising of a "clearance sale," "inventory close-out," or similar claims where you are led to believe regular stock is being sold and in fact special stock was brought in for the sale is misleading and contrary to the Act.

10. A representation that the goods or services are available if the supplier has no intention of supplying or otherwise providing the goods or services as represented, or if the supplier does not have any reasonable grounds on which to believe that he has the ability to supply or otherwise provide the goods or services as represented.

Example:

If an item is advertised at an unusually low price but is not available when you arrive at the store and the seller tries to "switch" you to another more expensive item, the supplier may be contravening the Act by "bait and switch" sales tactics.

11. A representation that a specific price benefit or advantage exists if it does not.

Example:

Representing an item as "on sale" or "20% off" is not permitted if the representation is not true.

12. A representation that a part, replacement, repair or adjustment is needed if it is not.

Example:

Replacing transmission gears of a car when only the bands need adjustment is contrary to the Act.

13. A representation by a supplier that a solicitation made by that supplier is for a particular purpose if, in fact, that solicitation is made for a different purpose than was represented.

Example:

A person who claims to be "conducting a survey on reading habits" but is, in fact, really a door-to-door salesman trying to sell a magazine subscription is violating the Act.

14. A representation that a consumer transaction involves or does not involve rights, remedies or obligations if the representation is deceptive or misleading.

Example:

You receive an unsolicited book in the mail and an accompanying letter advising that if you don't return it in 10 days you are obliged to pay for it. Not so, as there is no contract, provided you don't use it beyond the "free examination" period.

Or, an item is bought with a "full warranty," but the retailer later tells you that labour costs are not included in the warranty. Such action by the retailer is contrary to the Act.

15. A representation such that a consumer might reasonably conclude that the goods are available in greater quantities than are in fact available from the supplier.

Example:

If lamps are advertised at a low, low price without the statement that the quantity is limited and the supplier only offers two for sale, such a representation is unfair and contrary to the Act. It is another type of "bait and switch."

16. A representation as to the authority of a representative, employee or agent to negotiate the final terms of a consumer transaction if the representation is different from the fact.

Example:

You close a deal with a salesperson at what you think is a good price only to have the manager turn down the deal because the salesperson did not have the final authority to close the deal. Because of the Act, managers or suppliers cannot repudiate deals closed by their sales staff who acted as if they had the authority to close the transaction.

17. Giving an estimate or quotation of the price of the goods or services which is materially less than the price of the goods or services as subsequently determined or demanded by the supplier and the supplier has proceeded with performance of the consumer transaction without the express consent of the consumer.

Example:

An auto repair shop examines your car and quotes a repair bill of $200. Because of the Act the dealer cannot proceed with other work or charge much more than the quote unless first receiving your consent.

18. Giving, in any advertisement or display, less prominence to the total price of the goods or services than to the price of any part of the goods or services.

Example:

A dance studio advertises lessons at "only $2.00 per lesson" but tells prospective customers they must enter into a $200.00 contract for 100 lessons in order to qualify for the low price. The total price for all of the lessons must be given at least the same prominence as the lower price of each lesson.

SALES TECHNIQUES

The market place is designed on the one hand to serve you, and on the other hand to take your money away. That is fine as long as the two elements of the market place's personality stay in balance. But you do not have to be paranoid to suspect that the second element sometimes becomes dominant.

There are almost endless variations of sales tricks that you should watch out for,but it is not within the scope of this cause. In this lesson we would like to alert you to five areas where abuses are common:

1. misleading advertising,
2. pyramid plans,
3. high-pressure door-to-door sales tactics,
4. deceptive mail-order sales, and
5. telephone sales.

The principles involved in these areas will help you in other areas as well.

Misleading Advertising

Ads can mislead in a variety of ways. For one thing, they can be outright untrue (e.g., Super-Miracle Hair Tonic will make your bald head sprout hair again in just 20 seconds!) But plain lying is passé nowadays. More often today are ads that use partial truths and emotional manipulation to distract you from a factual, rational analysis of the product's merits.

This kind of manipulation is accomplished through a variety of propaganda devices. For example, there is the testimonial. Sports heroes, movie starlets, and other famous people can always be found touting the merits of one product or another. Such people are paid well for their appearances on behalf of a product. But the viewer, or reader is supposed to think, "Hey, if I use that product, I'll be as desirable as that person is." Then there is the opposite tack, the "plain folks" approach. Here, an ad uses people who do not look like models; they may even be homely or bumbling. You are supposed to buy the product because the people selling it are "just good old plain folks." The gimmick with these ads is the same as with those using celebrities. They are based on your emotional reaction to the person using the product. Meanwhile, they do not tell you anything about the merits of the product.

Then there are the glittering generalities. A product is "wonderful," "beautiful," "dynamite," or whatever. And it is being sold at "fantastic savings." When advertisers speak in generalities like this, an intelligent consumer would be justified in assuming that they do not have any specifics to back the claims up. Otherwise, why would they not cite the specifics?

The reverse side of the glittering generalities coin is the selective use of "studies." These are often done by unnamed "authorities." For health-related products, you are told that "doctors" recommend the product. Or the product's merits have been proven by a "leading" or "major" consumer organization or testing center. Your basic rule should be to distrust all studies cited in ads, unless the people who conducted the study are named. Any company can finance a "study" to prove whatever it wants or find an "expert" to testify to the merits of its product. As for endorsement by consumer organizations, these should be taken with several grains of salt. Truly objective consumer organizations protect their reputation for impartiality by refusing to allow their names to be used for commercial purposes.

Another advertising technique that plays on your emotions rather than telling you about the product is the "transfer" tactic. With a transfer, an advertiser attempts to take your good feeling about something entirely unrelated to a product, and associates them (illogically) with the product. Thus, you will see products wrapped in the theme of motherhood, Canada, the maple leaf, or humanitarianism.

A final propaganda device that is often used is the bandwagon effect. In substance, the ad says, "Everybody, or at least the majority, is doing it. If you want to be in, you have to get with the majority." The ad plays on the desire to be accepted, to be part of the crowd.

None of the techniques we have been discussing is illegal. But all of them are methods you, as a discerning consumer, should suspect. There are times to let your emotions govern your actions. But not when someone is trying to sell you something. Then you should be interested in the cold, hard facts.

Pyramid Plans

A pyramid plan is a money-making enterprise in which the chief source of money is the recruitment of new members into the plan. There is a product involved to give the whole operation the appearance of legitimacy. The product may be cosmetics, fire alarms, motivation kits, or some other item. But peddling the product is not how you will make your big money, according to the promises dangled before you. The big money, they say, comes when you, the distributor, recruit new members as sub-distributors.

When you sign up as a distributor, you have to pay a large sum of money, say $6,000. In return for this money, you get a few crates full of the product, and, more important, the right to recruit new members as sub-distributors. Each of the sub-distributors you bring in must pay, say $2,000 to the enterprise. Of that sum, perhaps $700 would go to you. In this case, you would have to recruit nine people to make your original money back. What you are likely to find, as many pyramid-plan victims have found to their sorrow, is that recruiting nine sub-distributors is almost impossible. After all, why should individuals want to become sub-distributors of your product...unless they are gullible enough to think they will make their money back by also signing up nine sub-distributors? So what's likely to happen is that you will end up having poured money down the drain. As a consolation prize, you will have a few leftover crates of unsold goods.

Conversations with people who have lost money in pyramid schemes consistently reveal one fact: The emotion-charged pyramid sales meeting is the crux of the entire operation. These meetings are packed with people who pose as new prospects. But they are really members of the pyramid scheme who try to whip enthusiasm to a frenzied pitch, making you feel alone and ashamed if you do not go along. The atmosphere of the pyramid sales meeting closely parallels that of a revival meeting. It is full of exhortation and repetition. The emotion appealed to is greed, a very natural emotion that is present in almost all of us. When a person's interest is aroused, the person is asked to put down $100 or so to show "good faith," and invited to another meeting. The second meeting sometimes called a "golden opportunity weekend," is

often a sort of retreat lasting a couple of days held out in the country. In this isolated setting, the pyramid propaganda machine goes into high gear, working on the prospective recruits until they plunk down their $6,000 (or whatever sum) to become distributors.

The only people who actually make money in pyramid operations are the founders. But let us put it this way: When you go to a pyramid sales meeting, you are already late. Those giving the speeches are the early birds.

Should someone try to recruit you for a pyramid plan, do not get involved. You might want to contact local law-enforcement authorities, since pyramids are being outlawed in many localities. Do not try to give the cold shoulder to recruiters by saying you do not have any money. That will only encourage them, since the operations tend to prey on have-nots. Pyramid personnel have been known to advise prospects on the best method of securing a loan. There is no record, though, of their ever having helped to pay one off. They may suggest the prospect go to several different banks, or even lie about the reason for borrowing (which is illegal conduct in itself).

In the interest of fairness, it is important to draw a distinction between pyramid schemes and legitimate multilevel operations. Legitimate multilevel operations do use distributors, many of whom are part-time recruits. But they charge no enormous initial investment fee. They do not use high-pressure tactics to recruit distributors. They let you back out and sell back your goods to the company (often at 90 percent of what you paid for them) if you become disenchanted.

Door-to-door Sales

Some people think door-to-door sellers are like pyramid operators, slick hucksters out to take away their victims' hard earned money. That characterization is not really fair. Nevertheless, authorities report many complaints about such sellers using dishonest means to make a sale. Complaints include the use of deceptive means to get inside the door; high-pressure sales tactics; little untruths about the quality, price, or character of the product; overpricing; and the nuisance aspect of the seller knocking on the door in the first place. Then, of course, there is the whole separate question of sales resistance. Some people feel so charmed by (or sorry for) certain sellers that they buy things they really do not need. Even if the sales pitch was honest, that kind of spending can quickly blow a big hole in the family budget.

If you get talked into buying something from a door-to-door sales rep that you do not really want, you have four days to cancel the deal. What you must do is notify the company, in writing, that you have changed your mind and you want to cancel the contract you have just signed. Just telephoning or talking to the seller or the company will not do. You must send notice in writing. And it is best to go to the post office and send it by certified mail. (Sending something by certified mail is not hard or expensive. If you have never done it before, a postal employee will be glad to show you how.) This way, you have proof that you sent the company written notice. You should also keep a copy of your letter for your own records, in case there is any dispute. And remember, the letter must be sent within four days of your signing the contract.

This four-day "cooling-off period," as it's known, protects you whether you make your purchase in your own home or someone else's home (as long as it does not take place in a store.) It protects you even if you asked the seller to come (as long as you were not in the seller's store when you asked.) There are a few cases where this rule does not apply. It will not help you if you are buying supplies for your business, insurance, real estate, or securities. But it covers just about everything else.

Before you sign any contract with a door-to-door seller, you should of course read it carefully. One thing that should be in the contract is a section explaining your right to cancel it. If it is not there, there is something wrong, and you should not sign. Remember that neither you nor the seller is legally bound to any verbal agreement, only to the written contract. Be sure everything you have agreed to is in writing, including the exact amount of money involved. Be certain there are no blank spaces that could be filled in without your knowledge. And do not forget to get a copy of the contract.

There are some other signs, besides the high-pressure rush, that should make you look suspiciously at sellers. If they offer to loan you their money for the first installment of a purchase, consider it a definite danger signal. The practice is unbusinesslike. As likely as not, it is intended to shame you into a purchase you do not need or cannot afford.

Beware too, of sellers who base their pitch on the educational welfare of your children. Especially bothersome are those who claim to have been sent by your child's school to offer a possible remedy for poor performance. The remedy turns out to be an encyclopedia, teaching machine, or some other expensive item you have to buy. Parents, concerned about their children, sometimes do not stop to think that school systems do not operate this way. If sellers tell you they were sent by your child's school tell them you will check with the school to verify that claim.

Other danger signs include extravagant bargain claims and razzle-dazzle bonuses. If a door-to-door sales rep tells you an item normally costs $700 but it is being offered to you for $298, you have reason to question the seller's honesty. Discounting is an accepted practice, but claims of 50 or 75 percent discounts are likely to be exaggerated, at best. And if a seller offers you all kinds of free "extras" when you buy the basic product, it is a good bet strings are attached somewhere. Perhaps the attractive-sounding bonuses are really cheap or shoddy. Or perhaps the basic product's cost is partly hidden, so you will end up paying more than you anticipated. A variant of the bonus pitch is the "free-gift" gimmick. You are told, either by mail or by a sales rep, that you have won a free gift. Some consumers are very excited by this prospect. What they find out, all too often, is that in order to collect the "free" gift, they have to buy something else first, or at least listen to a sales pitch. As often as not, that pitch is a high-pressure barrage designed to make you feel like a worm if you do not buy something to compensate the company for its generosity.

Mail Order Sales

One of the most popular sales gimmicks of the past decade has been the pitch made through the letter box in the form of unsolicited mail. Almost everyone with a good credit rating is familiar with the important-looking envelopes containing offers of everything from steak knives to greeting cards. Although this form of doing business is perfectly legitimate, the law watches for any attempt to victimize or deceive the consumer.

Although most direct-mail vendors are honest, there are others who try to profit from the normal forgetfulness of busy people. For instance, goods are sent unsolicited on a "free trial" basis and you, the recipient, are asked merely to fill in and return a pre-stamped card if you do not want further items to arrive. Let's say you do not want the goods, but you either lose the vital card or forget to fill it in; so next month's mail brings you another package — and a bill. "Do I have to pay?" you ask. If you were away all during the key period, you could come back to find a stack of unwanted, unordered stuff on your doorstep. The law answers that anyone receiving unsolicited merchandise (or credit cards) does not have to either return the stuff or pay for it.

Under the Post Office Act, it is illegal to send unsolicited goods (goods no one has ordered) C.O.D. A particularly shady trick practiced before this law came into effect was to send some expensive item C.O.D. addressed to a householder who had recently died. The sorrowing relatives would often pay for the goods assuming that they must have been ordered by the deceased.

The post office is not allowed to handle anything "obscene, indecent or immoral" — but, like the rest of society, it is struggling to find acceptable standards by which to rule on these questions of individual taste. Pornography is freely sold and mailed today which only a few years ago would have brought publishers and news agents charges of "disseminating obscene matter" (as the offence is still known in the Criminal Code).

Other matter that is banned from the mails includes betting slips, wagering odds sheets or any material that attempts to deceive or defraud the public or to obtain money under false pretenses. The federal customs authorities have the right to open and inspect mail if it comes from outside Canada. The post office is prohibited from opening any mail without the addressee's consent.

Under the Post Office Act, once an article is mailed, it is the property of the person it is being sent to — the addressee. If you are irritated or bored with unwanted mail-order offers, you can simply write REFUSED on the envelope, sign it and return it to your nearest post office. If there is a return address, it is sent back. If not, the post office opens it. If there is anything of value inside, it goes to the Receiver General. If you are offended by unsolicited pornographic mail, or have any complaint at all about the mails, you should write to the Postmaster General. If you are thinking of buying by mail, remember the maxim, caveat emptor ("let the buyer beware"). Although many companies which sell their wares by mail order are completely reputable and will exchange goods or give refunds, they do not have to, unless these terms are clearly offered as a condition of the sale contract.

Mail-order catalogues and press advertisements offering goods by mail are prepared by experts. These experts are skilled in illustrating and describing an article in the most attempting, if sometimes rather vague, terms. In a glossy catalogue, a fur coat or a power mower can often look better than the real thing. Before you send in your order, be sure you know exactly what you are buying and, furthermore, that the terms of payment are clear — and within your budget.

If things bought by mail order are unsatisfactory, and you have not stated return privilege, the only way that you can force the company to take them back is if the goods do not match the description under which they were ordered. At this point you can claim that these are not the things you contracted to buy — because of some either innocent or deceitful misrepresentation by the seller. The seller could be obliged to refund your money or exchange the goods for ones matching the description in the original advertisement.

In practical terms, however, if you have fallen for "an incredible bargain" from some unknown or distant mail-order house, you might not even be able to find the seller.

As a prospective mail-order consumer, here are a few tips you should know about to help you protect yourself.

(a) Do not rely solely on the picture of the item in the ad. Instead, note the size, weight, color, contents, or other aspects of the item, as described in the text of the ad.

(b) Always keep a copy of the ad or brochure you order from.

(c) Beware of fake "contests" that you have "won." These are simply another version of the free-gift gimmick described earlier.

(d) See if the ad promises a guaranteed delivery date, and if you are ordering holiday gifts, do it well in advance.

(e) If you are in doubt about the reputation of a mail-order firm, check with the Better Business Bureau, the Chamber of Commerce, or your provincial consumer protection office.

(f) Look for a company policy on returns. If the policy is not stated, ask for it before sending any sizable order. It is sometimes wise to test out a mail-order you have not used before making your first order a small one.

(g) Place your order at least thirty days before you want the goods. See if there is a cut-off date for the placing of your order, after which delivery will not be guaranteed.

(h) If you will not accept a substitute for the item you are ordering, say so on your order.

(i) Pay by cheque or money-order; otherwise, you have no proof you have paid. Keep a record of your order also; including the name and address of the company.

(j) When you receive the merchandise, check at once to see that it is intact and that it is what you ordered. If it is not, notify the company at once. Do not try to send the package back C.O.D. Save a copy of your letter and wait for the company's instructions.

(k) If you think you have been defrauded by a mail-order firm, notify the postal service. One reason mail fraud flourishes is that only one out of ten victims take this step.

Selling by Telephone

Always be on your guard with telephone sellers. You cannot see what you are buying and it is difficult to determine over the phone how trustworthy the seller is.

If a sale is made, the consumer is relying on an oral description of the goods. When the buyer receives them, if the goods do not fit the description or the promises made over the telephone, the buyer has the legal right to cancel the contract on the grounds of not receiving what was bargained for. If the buyer accepts the goods, and then finds that the goods do not measure up to expectations, the buyer can, of course, sue for damages — a difficult, time consuming and possibly expensive exercise. The best advice is not to negotiate sales contracts over the phone.

CONSUMER TIPS - DO NOT FALL FOR ANY OF THESE

1. **Sympathy appeals**, or hard luck stories, such as working their way through college, supporting an aged mother, etc.

2. **Gullibility appeals**, such as, "You are entitled to a discount of $50.00, if you sign today" or - "You won a Consolation prize, but in order to get your winnings, you must sign here, and pay $XX.00." You will likely be paying for everything you get.

3. **Survey pitch.** The sellers who start their pitch with a so-called survey.

4. **"Free."** "You have been selected to receive a 'Free Set'."

5. **Advertising display.** "You have been selected, and we wish to use your home for an advertising display."

6. **Bait and switch.** "You have won $XX.00 Credit on our appliance," (which sells for a cheap price), but when you order it, the sales rep refuses to sell it to you. The seller brings in a much more expensive appliance, which was the one you were meant to buy in the first place.

7. **Referral Sales.** The seller asks you for the names of 10 friends, who might be likely prospects, on the understanding you will be paid for each sale made. It may pay off, but more often it does not and you may lose a friend.

8. **Rush Tactics.** "You must sign today — this is a one-call opportunity, and tomorrow you will not be entitled to consideration." The reason may be that the proposition will not stand up to investigation.

9. **Paying a deposit on home repairs,** before work is started. The excuse may be to purchase materials for the job. If the contractor cannot finance sufficient materials to start the job, it is likely that he may not be able to finance his board and room to finish the job.

10. **Coupons for sale.** You get a coupon which entitles you to a cheap price. The seller wants to get an order for a quantity, and if you insist on only the one, you may not get the service you expect. Ask for the names of satisfied customers, and check with them before you pay out any money.

Exercise 1

Indicate whether each statement is true or false by circling T or F in the space provided. Be sure to check your answers with the lesson notes.

T F 1. Consumers are better off to consider price by unit of weight rather than by package size.

T F 2. The date on a product indicates the first day on which the item was placed on sale.

T F 3. Specific control over weights and measures was given to the provincial governments under the B.N.A. Act.

T F 4. Generally, anything which is to be used by an individual for personal or family purposes falls within the meaning of "goods," including houses and other real estate holdings.

T F 5. The best advice is not to negotiate sales contracts over the phone.

T F 6. Under the Post Office Act, once an article is mailed it becomes the property of the Post Office.

T F 7. If you purchase something from a door-to-door sales rep you have two days to cancel the deal.

T F 8. The only people who actually make money in pyramid operations are the founders.

T F 9. The Unfair Trade Practices Act does not apply to services provided by domestic servants employed in private homes.

T F 10. The Combines Investigation Act requires that all inquiries are to be conducted in private.

Exercise 2

1. What is the general aim of all consumer protection laws?

_____

_____

_____

2. What is the main government body charged with the duty to oversee and protect consumer rights in Canada?

_____

3. In regards to product packaging, what does the term "headroom" mean?

_____

_____

_____

4. From your own experience as a consumer, describe one incident where you noticed headroom in some product you purchased.

_____

_____

_____

_____

_____

5. What is the purpose of product-dating in regards to perishable goods?

_____

6. The Food and Drugs Act makes it illegal to sell food products which:

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

7. What federal government department is mainly concerned with the potential health hazards of drugs and sanitation?

_____

8. What are the two main provisions of the Motor Vehicle Safety Act?

   (a) _____

   _____

   (b) _____

   _____

9. What specific powers does the Hazardous Products Act give the inspectors who are designated to uphold the Act's provisions?

   _____

   _____

   _____

   _____

   _____

10. What are said to be the four basic rights of every consumer?

    (a) _____

    (b) _____

    (c) _____

    (d) _____

11. What two provisions are contained in section 37 of the Combines Investigation Act?

    (a) _____

    _____

    _____

    _____

    (b) _____

    _____

    _____

    _____

Exercise 3

1. In regards to advertising, briefly describe the following approaches and supply one example of each type which you, as a consumer, have personally seen or heard.

   (a) the "testimonial" -

   (b) the "plain folks" approach -

   (c) "glittering generalities" -

(d) the "studies"approach -

(e) the "transfer" approach -

(f) the "bandwagon" approach -

2. What is meant by the following statement: "When you go to a pyramid sales meeting, you are already late. Those giving the speeches are the early birds."

3. Suppose individuals decide a day or so after ordering goods from a seller who called at their home, that they would like to cancel the order.

   (a) Who must they notify?

   (b) How and when must they do this?

4. The best advice is not to negotiate sales contracts over the phone. Why is this?

5. It is unlawful to send unsolicited goods through the mail C.O.D. What unfair practice was this prohibition designed to prevent?

_____

_____

_____

_____

_____

Exercise 4

In Alberta the Unfair Trade Practices Act is intended to prevent unfair business acts or practices and aid consumers in recovering any losses caused by these practices. Below are listed some of the main provisions of this Act. For each one you are to provide one example **of your own, either real or imaginary**, where the Act would aid consumers. The first one is done for you.

0. The subjection of the consumer to undue pressure by a supplier to enter into a consumer transaction is an unfair practice.

   Example:

   The sale of a family burial plot and ornate casket to a widow as a result of persistent and undue pressure by a supplier who knew that her deceased husband was to be cremated is unfair.

1. The entering into a consumer transaction by a supplier where the consumer's ability was such that the consumer was not reasonably able to understand the character or nature of that consumer transaction.

   Example:

   _____

   _____

   _____

   _____

   _____

   _____

2. A representation that the goods or services have uses or benefits that they do not have.

   Example:

3. A representation that the goods have been used to an extent that is different from the fact.

   Example:

4. A representation that the goods or services are available for a reason that is different from the fact.

   Example:

5. A representation such that a consumer might reasonably conclude that the goods are available in greater quantities than are in fact available from the supplier.

   Example:

6. A representation that a specific price benefit or advantage exists if it does not.

   Example:

7. A representation that a part, replacement, repair or adjustment is needed when it is not.

   Example:

8. A representation by a supplier that a solicitation made by that supplier is for a particular purpose if, in fact, that solicitation is made for a different purpose than was represented.

   Example:

   _____

   _____

   _____

   _____

   _____

END OF LESSON 15

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Teacher's Comments:

_____

Correspondence Teacher

St Serv 1-86

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a **green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.**

Try to mail each lesson as soon as it has been completed.

When your register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

CONSUMER CREDIT

Basically, obtaining consumer credit involves incurring a future obligation to pay for goods or services received now. Almost all consumer credit purchases have the important characteristic that the goods or services represent consumption and not investment. That is, the value of those things received through the use of consumer credit decreases significantly or becomes nil within a relatively short time. For instance, a car is consumed and not really invested in because of relatively high depreciation over a short time period, and the value of a meal obtained on a charge card is gone as soon as the meal is over.

The cost of credit, called interest, is one of the most complicated topics in the sphere of consumer law. The British North America Act gives complete jurisdiction over interest, banking, and currency to the federal government, but the provinces maintain jurisdiction over property, disclosure of the cost of borrowing, and credit unions.

There are two different types of credit, i.e. *lender* credit and *vendor* credit. Lender credit granted by such institutions as banks, credit unions and finance companies, and is a sum of money loaned with or without security shown by the consumer. Vendor credit is retail, or "merchant" credit involving a purchase agreement between a seller and a buyer.

The most important credit-lending institutions in Canada are banks. Over half of Canada's total outstanding credit figures involve bank loans. The banks in Canada are governed by the Bank Act, legislated at Confederation.

Banks have cut drastically into the merchant credit and finance company market, by use of bank card systems such as VISA or Master Card. The system by which bank, merchant and consumer agree to combine efforts to present an overall credit card to the public is very complicated. For example, a person using a VISA card agrees to pay the bank any bills incurred using the card at retail outlets such as department stores and gas stations. The retail merchant has agreed with the bank that the bank will pay the consumer's bills submitted by the merchant through VISA, and the bank credits the merchant's bank account with deposits made through charge card slips. Thus, both consumer and merchant share the cost of this *charge card credit.*

The Canadian Bank Set

The Canadian banking system is made up of the publicly owned Bank of Canada and the privately owned chartered banks. At the time of Confederation in 1867 the responsibility for banking and currency was given to the federal government and, as a result, in 1871 the Canadian parliament brought into force the first Bank Act. All banks operating in Canada have their rights and liabilities regulated by this Act.

There are three principal functions of the Bank Act.

1. It provides for the organization of the chartered banks.

2. It states how they may do business — what they may do and what they may not do.

3. It lays down the reports that must be made regularly to the Minister of Finance, and the bank inspections which must be carried out under the Minister's direction.

It has been the practice for parliament to review the Bank Act every ten years to bring it up to date with present-day conditions.

The Bank of Canada

The Bank of Canada is Canada's central bank. Established in 1934 when parliament passed the Bank of Canada Act, it is publicly-owned and under the direct control of the government of Canada. The head office is in Ottawa and it has an agency in each province. It is managed by a governor, a deputy governor, and twelve directors appointed by the federal government. It reports regularly to the Minister of Finance who, in turn, reports to parliament concerning its operations.

1. The purpose of the Bank of Canada is to look after the financial affairs of Canada as a whole. It has authority

   (a) to regulate credit and currency.

   The Bank of Canada determines in a general way the amount of money held by the community, that is, currency outside of the banks in the hands of the public plus deposit balances in chartered bank accounts. Each chartered bank is required to keep with the central bank a percentage of the total of the bank deposits in all of its branches as a cash reserve. The Bank of Canada is authorized to increase or decrease the cash reserve requirements of the chartered banks providing it gives them one month's notice and does not raise it or lower it more than 1 per cent during any one month. If the reserve requirement is raised, more money must be deposited with the central bank and there will be less money in the community in the form of currency and bank deposits. (There will be less money for loans and, perhaps, interest rates on them will be raised.) If the reserve requirement is lowered, there will be more money for circulation in the community.

   (b) to protect the external value of the Canadian dollar.

   (c) to stabilize the level of production, trade, price, and employment as far as possible by its control over money and the chartered banks.

2. The Bank of Canada accepts deposits from chartered banks and from certain official international organizations. It does not accept deposits from individuals or carry on ordinary banking business.

3. It prints and issues all paper money (Bank of Canada notes) for circulation in Canada. The names of the governor and the deputy governor are on all our paper bills.

   When the chartered banks have worn-out bills ($1, $2, $5, $10, etc.), they ship them to the Bank of Canada at Ottawa, where they are examined to see that there are no counterfeit bills among them. The Bank of Canada sends them new bills in exchange.

Bank Audit and Inspection

To safeguard the interests of the shareholders and customers of a chartered bank, the Bank Act requires a rigid audit and inspection of a bank's financial transactions. The auditors are chosen by the shareholders at an annual general meeting and they must be chartered accountants of at least six years' experience in Canada. Two auditors, members of different firms, are appointed, but the same two may not audit the affairs of any one bank for more than two successive years.

The Bank Act also provids for the appointment of an Inspector-General of Banks. This person is an official of the federal Department of Finance, and an inspection section is maintained under the Inspector-General's supervision. It is the Inspector-General's duty to see that at least once a year a thorough inquiry is made into the affairs of each bank and that a report on this annual investigation is submitted to the Minister of Finance.

Bank Lending

Lending money for lawful purposes is a function of a bank. Such loans are constantly being made to business concerns for the purchase of raw materials, to finance payrolls and marketing costs, and for numerous other business purposes.

The Bank Act sets out the types of loans and investments a bank may make.

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Security for Loans

Primary security is the borrower's personal convenant (solemn undertaking) usually in the form of a promissory note. The best security for a loan is the good reputation and the earning power of the borrower. There must be both the ability and the willingness to pay back the loan.

Collateral security (secondary security) is some form of security in addition to the promissory note signed by the borrower. Collateral security is often required to give the lender protection and assurance that the loan will be repaid. Generally collateral security is required to obtain a bank loan if it is over a certain amount, or if the bank does not know the borrower very well. This is something additional, such as stocks, bonds, or rights to property which must be left as a pledge that the loan will be repaid.

The banks lend money to individuals for a wide variety of personal purposes. In making such loans the bank manager must be convinced of the borrowers' ability to repay and of their personal integrity, and know the purposes for which the money is required. Any borrower may be required to provide some collateral security or, failing this, to provide an endorser satisfactory to the bank. The endorser would then be liable for the amount of the loan should the borrower fail to repay it.

Note:

1. If a customer owes a bank money, the bank has a claim on securities which it is holding as collateral. The bank does not have a claim on valuables left in safety deposit boxes in its vaults for safekeeping.

2. Customers have the right to require absolute secrecy on the bank's part as to their financial affairs. They may recover actual damages from the bank if it violates this secrecy.

5. Banks deal in foreign exchange. They exchange Canadian dollars into foreign currencies, and foreign currencies into Canadian dollars. (A person going to a foreign country is able to go to a bank in Canada and get some Canadian dollars changed into the currency of that foreign country before leaving Canada.)

6. They provide for the safe transfer of money from one part of Canada to another part of Canada, and from Canada to other countries, by issuing drafts, money orders and letters of credit for its customers.

Credit Unions

Credit unions are savings and loans associations operated by people with a common bond, such as a parish, club, lodge, labor union, occupation, or residence in a certain area. The purpose of a credit union is to serve the members of its own group.

The Credit Union Act states that the capital of every credit union shall be unlimited in amount and shall be divided into shares of a par value of $5.00 each.

For the purpose of carrying out its objectives, every credit union may do such things as receive money from its members, make loans to its members, make loans to other credit unions which are members, and draw, make, accept, and endorse and issue bills of exchange such as promissory notes.

Finance Companies

These companies function principally as credit lenders, and are governed under the federal Small Loans Act. Finance companies were founded in Canada in the 1930's, and were the major money-lenders before banks and credit unions became more involved in the sales market. Finance companies traditionally have attracted the "high risk" consumer who was unable to obtain a bank loan. By law, finance companies are not allowed to accept security deposits. These companies must borrow money from banks to finance their loans to consumers, and for this reason, a loan obtained by a consumer from a finance company is paid at higher interest rates than charged by the banks.

Trust Companies

Trust companies also play a role in lender credit. They are allowed by law to accept deposits, grant loans, and administer trust funds and estates for banks and consumers.

Insurance Companies - These companies are permitted by law to lend money to policyholders up to 90% of the amount they have paid on their policy, and their rates are fairly low.

Alberta Treasury Branches - The Treasury Branches Act was passed by the government of Alberta in 1938. This Act authorized the provincial treasurer to set up and operate treasury branches at points in Alberta when and where it was considered advisable. They are backed by the resources of the province of Alberta.

The treasury branches provide those services which are normally provided by a bank, which includes deposits, withdrawals, loans, investments, money orders, drafts, traveller's cheques, letters of credit. They also act as agents for the government in matters concerning the issuing of licenses and permits.

The earnings and profit of the treasury branches are paid into, and form part of the General Revenue Fund of the province.

Mortgage Brokers - Mortgage brokers are also termed lender creditors. They principally lend cash against real estate property, at a fairly high rate of cost. This high cost iis due to the fact that the consumer who applies for such a loan is usually in a high risk situation. Often the broker writes the agreement for a larger sum than the actual transaction, and the difference is considered the broker's commission. The broker will then sell the agreement for its stated value to a third party, again pocketing the extra money acquired.

Pawnbrokers - Pawnbrokers make very small loans and accept personal property as security. Because pawnbrokers' loans are often not paid, and they must sell goods left with them in order to get their money, pawnbrokers are in the retail business as well as making loans.

Like other financial institutions, pawnbrokers must be licensed and their operations regulated by law. Because of the risk involved, they are allowed to charge fairly high rates of interest. These rates are set by federal statute.

Pawnbrokers are required by law to keep pawned goods a certain length of time. They may also make a further arrangement with the owner and set a specific date for the repayment of the loan. If no time is stipulated, the pawnbroker must allow the time set by law, plus a reasonable length of time after making a demand for payment. Then if the owner does not redeem them, the pawnbroker has the right to sell the goods to someone else.

Note:

A pawn is similar to a pledge. A pledge is personal property deposited with a creditor as security for a debt. Personal property left with a pawnbroker as security for a debt is called a pawn.

This dubious class of credit dealers operate within or outside the law. They serve high-risk customers in great financial distress who usually are unable to obtain credit or loans from reliable institutions such as banks. Their rates are tremendously inflated, and they are often "heavy-handed" in obtaining repayment of credit. An example of a situation in which a person might consult a loan shark for money is someone who loses at a racetrack or gambling casino and then is unable to repay other debts.

CREDIT AGREEMENTS AND CONTRACTS

Banks, credit unions and finance companies use promissory notes as a contract form.

These notes are written promises to repay money borrowed, and the terms are fixed regarding principal amount, interest, number of payments, and monthly payment. A person in good standing with an institution may be able to purchase a loan by simply signing a promissory note. However, the credit grantor may require a security claim as well as the individual's signature.

Security agreements usually entail a chattel mortgage. A chattel mortgage is the claim acquired by the credit grantor against specific properties belonging to the borrower. Whenever a borrower defaults on a loan repayment, the creditor has the right to claim the security specified on the agreement.

Provincial legislation covers chattel mortgages, and legally a mortgage must be registered to be considered valid.

For example, an individual borrows money from the bank to buy a car; the person also signs a chattel mortgage agreement giving the bank a security claim against the car and the bank registers this mortgage, the bank may then legally obtain the car in case of default in payment.

The credit grantor may require a co-signature on a loan as a security measure. Co-signing a note means that the person who co-signs is as liable for payment of the note as is the borrower. The creditor may claim against either party — the co-signer or the original borrower — in case of default in payments.

Conditional Sales Agreements

Conditional sales agreements are usually the type of contract signed in arrangements between merchants and consumers. These contracts are signed in purchases such as automobiles, furniture or major appliances.

These contracts legally mean that the actual ownership of the object purchased remains with the seller until the last payment has been made by the buyer.

Charge Accounts

These accounts are a major form of agreement by contract to "buy now - pay later." Major grantors in this area are department stores, clothing stores, and oil companies. There are two ways of using a charge account:

Straight charge — the consumer pays for the goods purchased on a charge card within 25-30 days of the billing date and is not charged interest;

Revolving account — the merchant continually extends the consumer's credit month by month without requiring that the full amount be paid each month. The charge for this service runs usually between 1.5% and 2.0% on the outstanding unpaid balance. The retailer usually sets a ceiling of between $1,000 - $2,500 on individual revolving accounts. Sometimes department stores charge interest on the unpaid balance before applying the monthly payment; therefore, the consumer ends up paying more than the stated interest rate on purchases.

Credit Over-extension

There are several steps open to a consumer who has trouble meeting payments for a variety of reasons:

(a) Communicate with the creditor;
(b) Seek debtor's assistance;
(c) Declare personal bankruptcy.

The following are procedures that may be used by a credit grantor against a person who defaults on payments.

1. Collection agencies are licensed and controlled by provincial statute and are used by creditors to collect unpaid bills. Tactics used may be harsh, although collection agents are controlled to a degree by government.

2. Merchants and lenders can seize goods or proceed with legal claims to obtain value for the goods purchased by the consumer, before assigning the account to a collection agency. The only business of the collection agency is to collect credit. If the creditor chooses to sue the debtor in Small Claims Court for the total principal owed, the creditor cannot then seize the security specified in the agreement.

Credit and Loan Agreements Act

The market for all kinds of consumer goods and services has been expanded because people have increased their purchasing power by using their credit. This has led to the development of many different types of credit plans and the conditions and costs of these plans vary considerably. It is important therefore that credit users should be able to select an agreement that is best suited to their particular needs and circumstances.

In instances of unsecured agreements, the retailer or professional person, such as a doctor, obtains a summons for a claim of monies against the debtor in Small Claims or a higher court. The debtor is not required by law to appear in court, but by failing to appear, the debtor loses by default. This judgment legally affirms the debt owing, and allows the creditor to enforce the claim in the following ways:

(a) Pressure the debtor to pay, within limits;
(b) Garnishee the debtor's wages;
(c) Seize assets of the debtor;
(d) Have a court issue a summons to require the debtor to appear before a judge to explain the reason for the default in payment.

It is obviously preferable for the debtor to attempt a solution without use of the courts. Debtors may obtain assistance in consolidating their debts for a lower monthly payment, or make arrangements to waive some of the debt, or communicate with the creditor to arrange for a reasonable rearrangement of the terms for repayment.

The last resort for a debtor with irreconcilable debts is bankruptcy.

Individual preferences for goods are usually based on value comparisons of all the features of the product and a similar shopping technique should be applied in choosing a credit plan. This means, of course, that all credit agreements should be understandable and easily comparable. The Government of Alberta has enacted the Credit and Loan Agreements Act to ensure that all of the terms, conditions and costs of any credit transaction are fully disclosed to the credit user who can then make meaningful comparisons in making a credit decision. Buyers and sellers, borrowers and lenders should become familiar with the Act so that it will serve its desired purpose.

The Act requires that any consumer credit agreement show:

- A clear description of the articles purchased or, in a loan agreement — the security pledged for the loan

- The agreed cash sale price with separate mention of any installation or delivery charges that are optional to the buyer or, in a loan agreement — the principal amount of the loan

- The amount of down payment and the value of any trade-in

- The unpaid balance of cash sale price, or in a loan agreement — the amount of money actually received by the borrower or paid out for the benefit of the borrower

- Any insurance premiums charged if such insurance is provided at the request of the buyer or borrower

- The registration fee actually paid to a provincial authority

- The total amount of credit

- The credit charges as a rate per cent per annum and a total dollar cost

- The total amount of debt to be paid

- The amount, due date and frequency of payments

- The rate per cent per annum at which additional charges (other than legal costs) may be calculated in the event of default

Continuous deferred payment agreements (revolving credit accounts) must show:

- All of the foregoing items where applicable and the periodic statement must show an itemized record of purchases and credits during the period

- The actual credit charge for the period both in dollars and as a rate per cent per annum and, the balance on which it is calculated

- The amount and due date of your payment

The Act also requires:

- That you receive a completed copy of your agreement before the goods are delivered or the loan proceeds are disbursed

- That where credit charges in an agreement are precomputed and added to the amount of credit, you are entitled to a rebate of charges if the creditor accepts prepayment of the account

Is Credit For You?

Credit can be a good thing if you know how and when to use it. But today, it is all too easy to hand over a credit card or sign on the dotted line for a loan without thinking about tomorrow. If you are not careful about the way in which you make use of credit you may get yourself in over your head.

To help you decide whether to use credit or not have a look at these advantages and disadvantages.

Advantages

- Credit allows you to have what you want now.
- Credit allows you to take advantage of bargains.
- Credit comes in handy in case of emergencies.
- You do not always have to carry cash.
- It is a good way to keep records of your spending.
- You write fewer cheques.

Disadvantages

- Credit can give you a false feeling of wealth.
- The goods may not last as long as the payments.
- Impulse spending is made easy.
- Credit has a price tag.
- You may be limiting yourself to businesses where you have established credit and therefore missing out on the good deals elsewhere.
- Using credit reduces future financial flexibility.

Costs

Credit has a price tag and the amount you pay can vary a great deal depending on what type of credit you use and on where you obtain the credit or loan.

The least expensive credit deal for you will have:

1. a large downpayment,
2. a low annual interest rate,
3. a large monthly payment, and
4. a short repayment period.

Consumer Credit

The Canada Department of Consumer and Corporate Affairs advises borrowers to shop for credit as carefully as they would for any other purchase. You are reminded to consider carefully the following points:

1. Plan you use of credit wisely - avoid impulse buying simply because credit is easy to get.

2. Consider the entire transaction before making any commitment. Ask yourself these questions: Is the purchase important enough now to justify the cost of credit? Would it be wiser to save and pay cash? Will the purchase give lasting satisfaction, and advance your long-range goals?

3. Be sure you know the cost of credit and any additional charges that may be made. These could include insurance, delivery or installation costs.

4. Compare credit plans. Finance charges vary widely depending upon the credit rating of the applicant, the nature of the goods, and the term over which the credit is to be provided. It may often be cheaper to borrow elsewhere and pay cash to the retailer.

5. Use only the amount of credit needed. Remember to allow some leeway for unforseen emergencies.

6. Keep the payment period as short as possible. Make payments promptly to avoid additional charges. Advise your creditor if your payment will be late.

7. Make the largest down payment possible in order to keep the balance requiring financing at a minimum. Take advantage of rebate privileges generally provided by provincial laws. Considerable savings in credit costs may be had by paying off early. Most provincial legislation provides that if a loan is repaid earlier than the contract requires, the customer is entitled to a proportionate refund of the cost of borrowing. This refund is referred to as a "rebate."

8. Read and understand the terms of your credit contract before signing. Never sign a blank agreement form, and always obtain a copy of the agreement before taking delivery of the merchandise or accepting the money on a loan.

Managing Credit

- Establish your budget goals and live within your income. Do not buy anything just because you can get it on credit — overinvolvement in credit can jeoporize your financial future.

- Zero buying problems is a goal you should shoot for, but you can only achieve this score by becoming an informed consumer. You can protect yourself from being a victim of poor buying habits if you try.

Making Credit Purchases

- Be sure you know how much more on item bought on credit will cost you. Compare cash and "on time" prices for similar items in different stores. Credit costs money, but you can save in the long run by taking advantage of sale prices and paying off your credit account promptly.

- Investigate the seller's reputation and analyze a credit deal before you sign it.

- Document and date your business transactions in writing; verbal agreements are binding but difficult to enforce. Guarantees and warranties should be examined carefully before a purchase is made.

- Do not submit to hard sell tactics — a good product will sell itself and a reputable merchant or dealer will have enough confidence in his product and service that pressure sales techniques are unnecessary.

Credit Cards

It is frightening how many people apply for and use credit cards without ever shopping around or knowing the limitations and use in terms of repayment. If you are unsure about the cards you are using, or are planning to apply for your first card, the following information should be helpful to you in making a wise decision.

Credit cards available on the market today can be broken down into four basic categories: retail, oil company, travel, and bank credit cards. Retail credit cards limit your purchases to the store or chain of stores your card is for.

Most major oil companies offer credit cards which can be used for automobile operating expenses (i.e., gas, oil, car repairs). Some can also be used at affiliated restaurants and hotels. Generally these cards can be used internationally.

There are many international travel credit cards which can be used for accommodation, meals, entertainment and for all kinds of transportation. Some of these cards can also be used at selected retail outlets. Such credit cards traditionally involve an annual membership fee.

The all-purpose, international bank credit cards can be used to purchase just about anything, including cash advances.

When you apply for a retail, oil company or bank credit card, your ability to pay is assessed and a limit is set on the amount of credit you will be allowed to use.

In the case of the travel credit cards, however, there is no limit set on the amount of credit you can use as you must pay off your statements as you receive them.

There are two basic payment plans most credit card issuers offer.

1. If you are interested in the convenience of using a credit card and not the interest payments, most card issuers will not charge you interest on your account if you pay if off within thirty days of the statement date.

2. The payment plan offered through most card issuers allows you to pay a minimum monthly payment on your account with interest calculated on the beginning monthly balance. The minimum amount you pay can vary from 5-10% of your total debt.

Other term plans, which a limited number of retail credit card issuers offer, allow you to pay off a certain percentage of your account within thirty days of the statement date with no interest charged, or with interest charged after the payment has been deducted.

Establishing a Credit Rating

To obtain credit you must establish and maintain a good credit rating. Your rating is determined in part by your past performance in meeting financial obligations and your present capacity to repay. When you apply for credit, the credit grantor's decision as to whether or how much credit to allow you will depend on:

1. what your paying habits are like,
2. what your income is,
3. what your expenses are,
4. what your current debt level is, and
5. what savings and assets you have.

If your credit application is turned down, it may be because you are lacking in some of the qualifications mentioned above or because the credit grantor obtained incorrect information on your credit rating. If you are turned down, ask the credit grantor why. If you feel the credit information obtained on you is incorrect, ask for the source and correct it. If you have no credit rating or wish to rebuild your credibility as a credit user, here are some tips on how to do this.

1. Open a bank account and maintain it.
2. Open a department store credit account or obtain a credit card. Keep purchases small and pay your account off within a 30 day period to avoid paying interest.

Obtaining a Credit Card

Whether you answer an advertisement you received in the mail or pick up an application yourself, the only way to acquire a credit card in Alberta is to apply in writing to the firm you wish to do business with.

Under Alberta's Credit and Loan Agreements Act, businesses are not allowed to mail credit cards to your home unless you have applied for one.

If you do receive an unsolicited credit card in the mail, you do not have to accept or use it. You are advised to either send the card back to the originating company or destroy it. If you do use a credit card received in this way, your action is considered written acceptance and you are then responsible for purchases made on that card.

Credit Card Use

Credit cards are a convenience.

Retail credit cards allow you the opportunity to take advantage of bargains when you are short of cash until the end of the month. In cases where you have an immediate need for a large expensive item, these cards enable you to pay for it with interest over a long period of time.

Oil company credit cards are useful for keeping accurate records of car operating expenses and travel cards are invaluable to the business person for keeping a record of expenses.

But using a card to buy something you know you really cannot afford can be the first step towards serious debt problems.

Before you apply for a credit card, look at your real needs.

As a general rule it is a good idea to limit the number of credit cards you use for the following reasons:

1. Control of finances. By using one or two credit cards you are better able to determine your financial status at any time. If you have several cards which are used by more than one member of the family, it is difficult to know exactly how much you owe. Often this lack of knowledge can lead to serious debt problems.

2. Cost. In most cases unless you pay your credit card bills as they come due, credit has a price tag. The more cards you use, the more interest you pay.

3. Safety. There is always more chance of a credit card being lost or stolen when you have several. Every year the issuers of credit cards lose millions of dollars due to the fraudulent use of stolen or misplaced credit cards. You eventually pay the bill through increased interest rates.

Lost Cards

If one of your cards is stolen or misplaced, notify the issuing company immediately by telephone and follow with a letter as quickly as possible.

Always keep a list of your credit card numbers, credit card company addresses and telephone numbers in a safe place for quick reference if you have to contact them on a stolen or lost card.

If you discover a card is missing and notify the issuers immediately, under the Alberta Credit and Loan Agreements Act, you cannot be held responsible for any amount charged to your account after such notification. In this case if you card is used before the issuer is notified you can only be held responsible for up to $50 per card.

However, if you do not notify the issuer within a reasonable length of time, and your card has been used, you may have to pay the full amount.

If you have several credit cards, do not carry them all the time. Lock them safely away in your home or a safety deposit box and take them out only when you intend to use them. Make occasional checks to ensure that your cards are where they should be.

Consumer Complaints

When you have paid good money for a product you have a right to expect satisfaction and service. If you do not get it, do not be embarrassed or intimidated into suffering in silence. That is exactly what the dishonest seller wants. Any reputable business needs your continued patronage and wants to know if something is wrong.

If you have had a disturbing experience with a disreputable seller (even if you did not buy), act! Your protest may encourage complaints from others who have been taken by the same outfit and that is a good way to get something done. Even if you do not receive satisfaction, you will alert others to the danger, and perhaps even hasten legislation or policing of undesirable elements in the business community.

There are more and more government agencies being created to deal with consumer complaints, problems and frauds. But before you go to an agency, first try to get satisfaction yourself through the following method:

1. If you are dealing with a local merchant, a personal discussion with the manager often clears up the situation. Otherwise, a written letter is better and avoids a telephone brush-off.

2. Start your letter with your return address and telephone number.

3. Keep it simple and to the point. Do not make sarcastic remarks.

4. Write legibly and, if possible, use a typewriter.

5. Make sure you have a name (sales manager, president) to complain to.

6. Make sure you have the correct address. (Many companies put their mailing addresses on cartons, literature and warranties.)

7. State where you purchased the faulty article, the date of purchase if known, and, do not forget to indicate the model number when writing about appliances.

8. Remember, always keep your sales receipts, plus copies of your letter and their reply.

Consumer Agencies

If these measures fail to gain you satisfaction, try writing or phoning one of the following:

Federal Government Consumer Consultants
Federal Building
9820 - 107 Street
Edmonton, Alberta

Your nearest Provincial Consumer and Corporate Affairs office:

Calgary 297-5700
301 Centre 70
7015 MacLeod Trail South
Calgary, Alberta

Edmonton 427-5782
7th Floor, Capitol Square
10065 Jasper Avenue
Edmonton, Alberta T5J 3B1

Fort McMurray 743-7231
Room 202, Offereins Building
9912A Franklin Avenue
Fort McMurray, Alberta T9H 2K5

Lethbridge 329-5360
#501 Professional Building
740 - 4 Avenue, South
Lethbridge, Alberta T1J 0N8

Peace River 624-6214
Bag 900
Peace River, Alberta T0H 2X0

Red Deer 343-5241
5008 Ross Street, Box 5002
Red Deer, Alberta T4N 5Y5

The Better Business Bureau

The local Better Business Bureau is one of the best places to start checking into the reputability of any company you are thinking of doing business with.

The Better Business Bureau is committed to the principle that fair dealing is good business for both buyer and seller and that by far the majority of buyers and sellers are honest and responsible. The work of the Better Business Bureau is therefore concentrated into two equally important facets:

(a) self-regulatory procedures through which the business field can discipline unfair trade practices.

(b) collection and dispersal of information to buyers to help them make sound buying decisions.

All consumers are urged to check with the Bureau before arranging for television service, buying a used car, registering for a correspondence school course or becoming involved in a business transaction with any firm or trades person with whom they are not familiar. The Bureau will furnish a factual report based on information in its files. These files are unique: they are the actual history of customer experience in doing business with the subject and are continually updated to report the current record.

The Bureau will tell an enquirer whether or not there have been complaints against a firm and, if so, the manner in which they have been handled. Every business, like every individual will occasionally make a mistake. It is the attitude of the company when complaints are brought to its attention that really counts.

In the event business firms are unwilling to consider reasonable complaints which are referred to them, or if they ignore correspondence, the Bureau has no authority to dictate to them. The Bureau's effectiveness does not, however, end there.

First, since reporting procedures are based on consumer experience, no company which has the interests of its customers at heart will allow a series of complaints to accumulate in the Bureau files.

Secondly, should this happen, the Bureau can, and does, publicize the activities of the firm. This can be done in the Bulletins which are issued to its members, including the news media. It can be done in the form of press releases, and because the Bureau deals only in facts, no Better Business Bureau has ever been successfully sued in the courts as a result of having published derogatory information.

A third, and highly effective weapon of the Bureau comes from the co-operation of advertising media. On those few instances when a series of unanswered complaints is built up in the Bureau files, it may open its files to newspapers or other media involved and suggest that further advertising by this particular firm is no longer in the public interest. Usually the newspapers and radio or television stations will deny the advertiser futher advertising privileges until the situation has been rectified.

Credit Problems

If you are experiencing money problems, your only real solution is to face the situation. Write down an honest record of your total financial picture. You need a precise picture of what your debts and cost of living are so you can compare these figures to your take home pay and learn the true extent of your debt problem. If you discover you have a problem, before anything else, talk to your creditors and explain why you have been unable to make payments. Most creditors will co-operate in making some kind of temporary arrangements. In theory, refinancing your debts sounds like a good idea. But in practice, you may end up paying a greater amount of interest pledging collateral that was once free and clear, and you may have to obtain a co-signer.

Collection Agencies

Ignoring a debt situation may result in your debt being turned over to a collection agency. Collection agencies are regulated and must comply with the regulations of the Alberta Collection Agencies Act. Their failure to operate under these regulations may result in their license being either suspended or cancelled. If you feel undue pressure is being applied by a collection agency, contact the manager of the collection agency. If you are unable to gain satisfaction from the manager contact your nearest Alberta Consumer and Corporate Affairs office.

Your Rights

If you are unable to pay your bills you may be faced with such things as wage garnishees and you should be aware of your rights. A credit grantor or collection agency cannot normally seize security or other personal property or garnishee wages without going through the proper legal channels. In situations not involving chattel mortgage or conditional sales contract agreements the creditor ordinarily must give you notice of legal action. You are then allowed the opportunity to file a defense. Do not ignore this opportunity. If you do not appear in court to defend yourself, chances are the court will award a 'default judgement' and you will have to pay the debt. If the court rules that the debt is legitimate, they are in effect granting the creditor the legal right to collect the debt through such means as garnisheeing your wages or bank account; or repossessing assets like automobiles or furniture. If you do not appear in court to speak for yourself, you have no defense against this action. If you are served with a notice and if there is some question as to the validity of the debt you should go to court taking any pertinent documents and, if necessary, consult with a lawyer beforehand.

Wage Garnishees

When a creditor uses a wage garnishee the creditor is claiming a certain amount of your salary to pay a debt. Usually such an action can only be implemented after the creditor has obtained a 'judgement' and a 'garnishee order' from the courts. Under Alberta Court Rules creditors are limited as to how much of your salary they can claim each month if you are garnisheed. Any monies deducted from you by garnishee are paid into the court and later dispersed to creditors with valid claims.

Seizures

If you are faced with a seizure it means a creditor plans to claim certain goods to sell and repay a debt. In order to seize goods a judgement creditor must obtain a "Writ or Execution" from the courts. A Sheriff or Bailiff will deliver this "Writ" and a "Notice of Objection" to you in person and will either take the goods away immediately, or attach a sticker to them and leave them with you. With the use of the Notice of Objection you are allowed 14 days to object to the seizure. If you do not the Sheriff can sell the goods. If you do file a Notice of Objection, the creditor has to apply to the courts for an order to sell the goods. Again you will be notified of this hearing date. Verbal objection to a seizure is not enough. Your only method of objection is to fill out the form supplied to you and attend the hearing.

Repossession of Collateral

A creditor has the right to repossess items which were purchased on a conditional sales contract if payments are not maintained. This type of seizure is much simpler. You are made aware of the seizure either by the creditor or when the goods are actually seized. You still have the right to object. Once a creditor does repossess such items from you, normally the creditor cannot collect any remaining balance owing on the sale of the goods.

Voluntary Repossession

If you sign a voluntary consent (quit claim) to return goods to a creditor you are giving him permission to sell the goods without going to court. Read carefully any document you are asked to sign so that you do not waive any rights you have under the law. If you do sign this type of document, the creditor may still attempt to proceed to obtain a judgement from the courts for any balance remaining after the goods have been sold. Again, exercise your right to appear in court as you may have the defence that any goods sold using this procedure should cancel the debt in full.

If you have any doubt, consult a lawyer!

Debt Counselling Services

The Debtors' Assistance Board is an impartial public service organization, formed in 1943, to help debtors understand their rights and obligations and to help them solve their financial problems.

Individuals with debts may contact a counsellor at the Board for advice and help on such things as the following:

(a) Family financing and budgeting;
(b) Information on legal proceedings (garnishees, seizure, foreclosure);
(c) Obtaining a court order binding creditors to accept what the debtor is able to pay;
(d) Information regarding any consumer protection act or advice on a financial problem related to debt;
(e) Family counselling on financial matters to help the family develop a sound money plan.

The Debtors' Assistance Board works completely in the interest of the debtor, and all information is confidential. Any action suggested by a counsellor must be approved by the individual concerned before it can be implemented.

The counsellor analyses the information received from a client to determine why the problem exists. The counsellor then discusses possible courses of action with the client. In order to solve the problem the debt counsellor may telephone or write to the creditors or any agency that may have initially referred the debtor to the Board advising them of suggestions as to a solution of the debtor's problem.

Counsellors act as mediators between creditors and debtors in cases where mutual aggreement cannot be reached. They can also make representation in court on behalf of a debtor, and may arrange legal counsel if the matter is serious.

Obtaining Help

The client comes to the Debtors' Assistance Board by appointment. The counsellor interviews the client to find out exactly what the problem is. The client may be facing a single problem like a seizure, garnishee, or foreclosure, or may have many problems such as being over extended and facing pressure from creditors in many areas.

The counsellor may solve the problem by simply explaining the client's rights under such legislation as the Conditional Sales Act. The Board has found that in many cases the debtor is not aware of these rights, but once they are explained, the problem disappears.

If, on the other hand, the counsellor finds that the problem is complex and requires professional knowledge from a lawyer, the counsellor may refer the client to the Alberta Legal Aid Plan where a lawyer may be appointed to look after the case. An application may then be submitted to the courts for an extension of time for payment on a mortgage foreclosure, or to oppose the sale of seized goods.

Whatever the advice or direction given, the counsellor follows up the case and does everything possible to help the debtor become aware of the assistance available through the Debtors' Assistance Board and any other agency in Alberta.

Exercise 1

Indicate whether each statement is true or false by circling **T** or **F** in the space provided. Be sure to check your answers with the lesson notes.

T F 1. The most important credit-lending institutions in Canada are trust companies.

T F 2. In Canada, the responsibility for banking and currency was given to the provincial governments.

T F 3. At present time the Bank of Canada has the sole right to issue paper money.

T F 4. If a depositor owes money to a bank, the bank has the right of claim on the valuables that the depositor keeps in the safety deposit vaults of the bank.

T F 5. It is illegal for a minor to deposit money in the bank.

T F 6. Bank of Canada notes constitute legal tender in Canada.

T F 7. The Alberta Treasury Branches are backed by the resources of the province of Alberta.

T F 8. The Bank Act does not control the types of loans and investments a bank may make.

T F 9. Collateral security is some further form of security in addition to primary security.

T F 10. A pledge is personal property left with a creditor as security for a debt.

T F 11. The purpose of a credit union is to serve the general public.

T F 12. Finance companies usually charge their customers lower interest rates than banks do.

T F 13. Under a conditional sales agreement title to the goods passes immediately to the buyer when the contract is made.

T F 14. Credit allows consumers to take advantage of bargains.

T F 15. Businesses are not allowed to mail credit cards to your home unless you have applied for one.

T F 16. A creditor has the right to repossess items which were included in a conditional sales contract if payments are not maintained.

Exercise 2

Fill in the blank spaces in the following statements; only one term is required for each space.

1. The cost of credit is called _____.
2. Parliament reviews the Bank Act every _____ years to bring it up to date with present-day conditions.
3. The chartered banks are also known as _____ banks.
4. Any borrower may be required to provide some collateral security or, failing this, to provide an _____ satisfactory to the bank.
5. Bank _____ are chosen by the shareholders at an annual general meeting and they must be chartered accountants of at least six years experience in Canada.
6. _____ _____ are savings and loan associations operated by people with a common bond.
7. Insurance companies may lend money to policyholders up to _____ of the amount they have paid on their policy.
8. Personal property left with a pawnbroker as security for a debt is called a _____.
9. The market for all kinds of consumer goods and services has been expanded because people have increased their purchasing power by using their _____.
10. The last resort for a debtor with irreconcilable debts is _____.
11. When a creditor uses a wage _____, this means the creditor is claiming a certain amount of a debtor's wages to pay a debt.

Exercise 3

1. (a) What important characteristic do almost all consumer credit purchases have?

   _____

   _____

   (b) Use an example to demonstrate this characteristic.

   _____

   _____

2. Name the two different types of credit available and give a brief description of each.

   (a) _____

   _____

   _____

   (b) _____

   _____

   _____

3. What is a credit union and what is its purpose?

   _____

   _____

   _____

   _____

   _____

4. Primary security is

   _____

   _____

   _____

5. The three principal functions of the Bank Act are:

   (a) _____

   _____

   (b) _____

   _____

   _____

   (c) _____

   _____

   _____

   _____

6. In deciding whether or not to make a personal loan to an individual the bank manager takes into consideration:

   (a) _____

   (b) _____

   (c) _____

   _____

7. Collateral security is _____

   _____

   _____

   _____

   _____

   _____

   _____

   _____

   _____

8. Why do finance companies charge a relatively high rate of interest on their loans as compared to banks?

9. May anyone obtain a loan from an insurance company? Explain.

10. What is a promissory note?

11. What is a chattel mortgage?

12. What is meant by the term "co-signing a note"?

13. Under a conditional sales agreement when does the title pass to the buyer?

14. Differentiate between a "straight charge" account and a "revolving charge" account.

15. What was the purpose of the Alberta government enacting the Credit and Loan Agreements Act?

16. When buying any item on credit, what is the advantage of making the largest down payment possible?

17. What do you feel are the three most important advantages to using credit?

(a) _____

_____

(b) _____

_____

(c) _____

_____

18. What do you feel are the three most important drawbacks to using credit?

(a) _____

_____

(b) _____

_____

(c) _____

_____

19. What four components will an inexpensive credit plan include?

(a) _____

(b) _____

(c) _____

(d) _____

20. If you receive an unsolicited credit card in the mail and use it, what are the consequences of this action?

_____

_____

_____

21. What is meant if someone's wages are 'garnisheed'?

Exercise 4 - Review

1. Craig Whitney loved baseball. As long as the weather was nice, Craig usually played baseball every day. On Saturday morning Craig's team was engaged in an unusually close game. With the score tied 2-2 in the seventh inning, Craig tried to steal home with the winning run. He was successful and his team won the game. It was at the expense of a broken wrist, however. Going to Dr. Thurston, Craig had his wrist set and put in a cast, but refused to pay his bill. "I am a minor and need not pay," Craig told the doctor. Can Craig Whitney do this?

2. Bill Frieze was newly married. The first week the milkman for D.D.G. Dairy left two quarts of milk at Bill's door on Tuesday and Thursday. Bill and his wife drank the milk and then placed the empties outside the door. At the end of the month Bill receives a bill from the dairy. Is he obligated to pay it?

3. Dick Cartwright had a good day so far. On his way to school he found a dollar bill in the student parking lot and in his sixth period history class he scored one hundred on a check exam. His luck continued. On his way home from school, Dick found a wallet in front of Cane's Drugstore that contained $50. Knowing that it was not his to keep, he found identification in the billfold that showed the rightful owner. Dick returned the wallet and was thanked. That evening, the paper had an ad in it which offered a reward for the return of the wallet. Can Dick go back and collect the reward?

4. The Western Hardware Store placed an advertisement in the Daily Bugle stating that they had a special offer on a new electric lawn mower. The price stated was $59.95. When customers came to buy the mower, they were quickly informed that the price in the local paper was in error. It should have read $159.95. One particularly indignant customer sued the hardware store in order to force them to sell the mower at $59.95. Do you think he will succeed?

5. Sam Porter found a watch and then sold it to McCarthy for $20. Does McCarthy now have title to it?

6. Don Parish needed a power mower for his big lawn. Hearing that Tom Elickson had one for sale, Don went to Tom's house, tried out the power mower and bought it. After cutting the lawn once, the mower quit working. Don found out that Tom had put sawdust and soapy water in the crankcase to keep the gears from knocking. Don asked for his money back. Will he get it?

7. Rod Jarvis, age 17, married his 16-year-old girlfriend, Barbara. After being settled for about two weeks, they both decided they needed some new furniture. Within the next three days they purchased a new bedroom set, a couch and a new fridge. Later, realizing they had purchased too much in comparison to what their income was, they attempted to back out of the sales contracts. They contended they could because they were minors. Will they be successful?

8. Don and Millie Erickson purchased an air conditioner, signing a conditional sales contract that provided for payment over the next fifteen months. After six months, they stopped making payments contending that the conditioner did not operate satisfactorily. The seller threatened to repossess the conditioner unless payments were resumed. Can the seller legally repossess the air conditioner?

_____

_____

_____

_____

_____

9. John Marconi was a building contractor who specialized in constructing fifteen to twenty houses at one time. He ordered eighteen bathtubs from the Modison Company. When the order arrised there were twenty-five tubs. After he had ordered them, he found he could have purchased a similar tub at a smaller cost. Knowing he could save some money, Marconi refused the first shipment. Is Marconi within his rights?

_____

_____

_____

_____

_____

END OF LESSON 16

LESSON RECORD FORM

3430 Law 30
Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____
Address _____
Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____
Correspondence Teacher

St Serv 1-86

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

St. Serv. 9-91

LABOUR LAW

Our study of labour law is composed of two main categories — the law of individual employment and the law of collective bargaining. Included in the first category is an examination of the nature of the employment contract, the statutory minimum standards which govern all employment relationships, and the rules governing wrongful dismissal. The study of collective bargaining law focuses on the process by which unions are organized and obtain the authority to act as the exclusive bargaining agent on behalf of their members. This includes the process of collective bargaining (including mediation, strikes, lock-outs, picketing), the restriction of employer and union practices detrimental to good labour relations, and unfair labour practices.

Labour Legislation

As the above introduction indicates, the primary source of labour law in Canada is legislation, both federally and provincially enacted. The federal government has jurisdiction over labour matters in the areas of inter-provincial and international transportation and communication, Crown corporations and financial institutions, as well as works designated as being for the general benefit of Canada. For example, federal labour legislation applies to employers and workers in the airline industry, the railways, television and radio broadcasting, and the trucking industry where the trucks operate inter-provincially.

The Canada Labour Code, 1970, and its subsequent amendments, applies in general to employers and workers within the jurisdiction of the federal government. The Code is divided into three main parts: employment standards, employee health and safety, and industrial relations. The Code provides for minimum standards with respect to hours of work, wages, vacations and holidays, maternity leave, bereavement leave, termination of employment, sick leave, severance pay, and unjust dismissal. The section covering industrial relations establishes the Canada Labour Relations Board and governs the certification of unions, collective bargaining, collective agreements, the conciliation procedure, strikes, lockouts, unfair labour practices, and offences and penalties for contraventions of the Code. The Code also contains provisions relating to the health and safety of employees.

In the provincial sphere, the provincial government has authority to legislate with respect to labour matters within provincial jurisdiction, or in other words, to everything which is not under federal control. The two major pieces of legislation which govern labour in Alberta are the Employment Standards Act and the Labour Relations Act. These two Acts replaced the old Alberta Labour Act and they came into effect on March 1, 1981. The Employment Standards Act is protective legislation which sets minimum standards of employment and working conditions in Alberta, while the Labour Relations Act establishes and regulates the collective bargaining process between employers and organized labour.

The Employment Standards Act

This Act applies to all employers and employees in Alberta, with the exception of employers and employees under federal jurisdiction, employers and employees under the Public Service Employee Relations Act (in general, this means the provincial civil service), certain groups who are covered by their own legislation such as the academic staff at the universities, colleges, and technical institutes in Alberta, the police, persons who are self-employed, and employers and employees otherwise covered by a collective agreement. Certain other employer and employee groups are also exempt from the operation of certain parts of the Act. Such groups include domestics working in private homes, farm and ranch workers, lawyers and their articling students, chartered accountants and their articling students, and certain types of salespersons.

The Employment Standards Act is divided into sections as follows:

Part 1 - provides for the interpretation, application, and operation of the Act;

Part 2 - provides for the administration of the Act, the authority of the officers appointed under the Act, and the keeping and maintenance of employment records by employers;

Part 3 - sets out the employment standards which must be met by employers with respect to payment of wages and allowable deductions from those wages, hours of work, overtime pay, overtime agreements, maximum hours of work per day and minimum hours of rest, notification to employees of work schedules, minimum wages, vacations and vacation pay, holidays and holiday pay, termination of employment, maternity benefits, and the employment of young people;

Part 4 - provides a mechanism for the collection by employees of their wages, overtime payments and other benefits, such as maternity benefits;

Part 5 - provides for the enforcement of the orders made under Part 4. It also specifies the offences and penalties for non-compliance with the Act.

Students have problems or questions pertaining to employment standards may contact the Employment Standards Branch of the Alberta Department of Labour. Branch offices are located in Edmonton, Calgary, Red Deer, Grande Prairie, Lethbridge, Medicine Hat, Edson, and St. Paul.

The Labour Relations Act

This Act applies to employers and employees in Alberta. However, as with the Employment Standards Act, there are certain groups to whom the Act does not apply. These include employers and employees within federal jurisdiction, the provincial civil service, employment groups covered by their own legislation, the police, firefighters, farm and ranch labourers, domestics working in private homes, persons who are self-employed, persons employed in a managerial capacity, and doctors, lawyers, dentists, architects, engineers, and lawyers employed in their professional capacities.

The Labour Relations Act is divided into sections as follows:

Part 1 - establishes the Labour Relations Board and governs its authority and operation. The Board is responsible for the interpretation and enforcement of the Act;

Part 2 - provides for the certification, registration, and de-certification of trade unions and employers' organizations;

Part 3 - governs the collective agreements within the oil sands and heavy crude oil construction industry;

Part 4 - governs collective bargaining in Alberta. Collective bargaining is the process whereby employee groups, usually a trade union, negotiate the terms of their employment with their employer. The final result is a collective agreement which is binding on the employees and their trade unions, and their employer;

Part 5 - governs mediation, strikes, and lockouts. Mediation is the process used when the parties have not been able to arrive at a collective agreement. A mediator assists the parties in arriving at a settlement. Strikes or lockouts are usually the result when the parties cannot reach an agreement even with the assistance of a mediator. Another mechanism for reaching a settlement is a Disputes Inquiry Board appointed by the Minister of Labour. (Such a board was appointed to settle the nurses' strike in Alberta in 1982.);

Part 6 - provides for arbitration. This is a process used to settle a specific dispute between employers and employees or their trade unions, for example, a disagreement about the interpretation or violation of a collective agreement;

Part 7 - is a miscellaneous part which provides for such matters as successor employers and trade unions (e.g. when a business is sold or another trade union becomes the bargaining agent for a group of employees), unfair labour practices, and jurisdictional disputes in the construction industry. This Part also establishes what constitutes an emergency so as to allow the government to end a dispute and impose a settlement procedure;

Part 8 - sets out the offences and penalties for non-compliance with the Act or the Labour Relations Board's orders, directives, and requests.

Other Provincial Legislation

There are other Alberta statutes which apply to employers and employees in Alberta. Some of these include the Individual's Rights Protection Act, the Occupational Health and Safety Act, the Department of Labour Act, the Public Service Employee Relations Act, the Colleges Act, the Technical Institutes Act, the Universities Act, and the various Acts which govern individual professionals such as doctors, lawyers, dentists, architects, engineers, teachers, police, and firefighters.

Employee-Employer Relationships

As was stated in the introductory paragraph to this lesson, there exists today two basic types of employee-employer relationships. The first can be called the individual bargaining relationship. This applies to employees who enter into a personal and individual contract of employment and who try to achieve by themselves whatever terms and conditions of employment they can. The second, the collective bargaining relationship, applies to those employees who have their terms and conditions of employment negotiated for them by a collective entity known as a trade union. The trade union bargains for a single contract on behalf of all its members employed by a particular employer.

As has already been noted, both relationships are governed and regulated by many statutes which constitute our province's labor laws. The laws dealing with the collective bargaining relationship attempt to regulate the conduct of relations between trade unions on the one hand and corporations on the other. No specific laws exist which similarly regulate the individual bargaining relationship. The labor laws in this area attempt to formulate standards with regard to the separate problems of working conditions, wages, overtime, vacation and sick pay and other matters of concern to individual workers. In addition, the laws attempt to establish minimum conditions of health and safety in particular industries.

In passing, it should be noted that about two-thirds of the workforce in Canada is employed on the basis of an individual employment contract.

Today the most common classes of employer-employee relationships are those of:

1. master and servant,
2. principal and agent, and
3. employer and independent contractor.

Master and Servant

In modern times the relationship of master and servant has become that of employer and employee. The older term, master and servant, refers to a time when there was little or no industry. Employment in those days usually meant working in the master's household or on the master's farm. Many persons were employed in one large home, or on a large holding or estate. It was during this period that a great deal of our common law concerning master and servant was established. The term, master and servant, is still used because it serves to distinguish one particular relationship of employer and employee from other relationships of employer and employee. Among these are principal and agent, and employer and independent contractor.

The relationship of master and servant is established by a contract that gives one party (the master or the employer) the authority to direct not only what work the other party (the servant or the employee) is to do, but also the way in which the work shall be done. Unless one party controls the manner in which the other party is to do the work, the contract of employment is not that of master and servant.

A contract of hire may be oral (spoken words only), written, or implied by the conduct of the parties. However, an oral contract is good only if the period of employment does not exceed a year. If the period of employment is to be for more than a year, the contract of hire comes under the Statute of Frauds and must be in writing to be enforceable. Similarly, if the period of employment is to be for less than a year but is not to commence in time to be completed within one year from the date the contract is made, the contract of hire must be in writing to be binding.

An example of an implied contract of employment is a case where a business changes hands, and the employees continue their duties without a formal re-hiring by the new management.

When there is an excess contract of hire, in either spoken or written words, but no understanding as to what the pay will be, there is an implied contract to pay, and the wage would be that which is paid for the particular kind of work in the area.

However, if a person does work for close relatives such as father, mother, brother, sister, uncle, or aunt, an implied contract is not effective to enforce payment. In such a case it must be proved that wages were supposed to be paid.

A contract of hiring and service cannot be specifically enforced against either party, and only damages for breach of contract can be obtained. Even damages cannot be obtained if the party to be sued is not of age, as the contract would not be binding on a minor unless the contract is one considered valid by reason of its being for the minor's benefit.

The individual employment contract is a continuous on-going assessment by both of the parties concerned. The employer is concerned with receiving satisfactory service. The worker assesses the working conditions and the amount of compensation received. The employer cannot force the employee to do work outside the contract, but is not required to justify firing the employee if the employee does not agree to modify the contract.

The more skilled employees are and the greater the relative scarcity of other persons to supply similar services, the more they can demand and obtain from an employer. They can also demand and receive job security which virtually guarantees employment for as long as they wish. At the other end of the scale are the unskilled workers who compete for jobs with a vast number of similarly unskilled but physically able persons. Because they have a poor bargaining position they can demand little. In many cases they receive the minimally prescribed wage rate. This group of workers stands to gain the most from trade union representation.

Certain highly skilled or highly valuable employees demand and obtain written employment contracts which set out their remuneration, other employment or fringe benefits and, most importantly, the length or period of their employment. With the existence of a fixed term of employment expressly written into a contract, employees have the maximum amount of protection against arbitrary action on the part of their employer. Employers who desire to terminate employees in this position before their contract has expired may face serious financial consequences in that they will be forced to pay the employees for the duration of their contract even though services are no longer being provided. (See pages 15 to 19 for two examples of written employment contracts.)

However, the vast majority of employees do not work under written contracts. In most cases all that exists between them and the employer is the exchange of promises -- one promising to show up for work and the other promising to pay for the work done. The relationship is very casual and informal. Such employees are subject to the whim of the employer and are often terminated for inconsequential reasons. On the other hand, they are free to leave their employmen at will and seek other and possibly better employment. But it should be borne in mind that the most pressing concern of most unskilled or semi-skilled employees is that of job security. There does not exist today an endless abundance of good alternative jobs. As a consequence most employees, having limited means to support themselves and their families while looking for new employment, attempt, if possible, to maintain themselves in their present employment situation. In order to compensate partially for some of the imbalance that exists in this area, the provincial government has enacted legislation to provide the individual workers with a minimal element of security in their employment, but in large part they still depend for other rights on the generosity and good will of their employer.

Obligations of Employer

The law imposes certain duties and obligations on the employer, such as requiring certain safety appliances on machinery, sanitary facilities in factories, etc. The employer must maintain a safe place to work, safety appliances and competent fellow-workers. The employer is under obligation to provide rules and regulations and to issue warning where danger exists. An employee is presumed to assume the ordinary risks of employment and the employer is not liable unless negligent and does not take reasonable care to prevent exposing the employee to danger.

If employees are injured in the course of their employment, they can be cared for under the Worker's Compensation Board (discussed in detail later.) Claims for injuries are impartially dealt with by the Board. The term "worker" under the Act includes persons, male or female, whether eighteen years of age or not, but it does not apply to farm laborers or to domestic servants. The Board assesses and collects an amount from each employer in certain lines of business and has set up an "accident fund." Compensation is paid out of the fund and no costly court procedures are involved.

Obligations of Employees

Employees must use reasonable care and skill in the performance of their work. Employees who profess to have special skill and are hired for that reason, must use that skill. They must be punctual, honest and courteous in dealings with their employer and must obey instructions. A flagrant violation by employees of any of these obligations warrants their dismissal, and, under certain circumstances, they may be liable to pay for any damages caused to their employer.

Liability of Employer to Employee

Employers must protect their workers by providing a safe place to work, competent fellow-employees, and rules and regulations where danger exists. Employers are liable in damages (a money compensation) for injuries resulting from defective buildings, appliances, etc., if the defect was known to them or ought to have been known. Employees who are also negligent cannot recover full damages and the negligence may be apportioned between the employer and employee.

If injuries are caused by fellow employees, employers are not liable unless they engaged and continued the employment of such employees knowing them to be incompetent or without satisfying themselves that they were competent to perform their duties. When employees accept employment in a place where others are employed, it is presumed that they accept this risk along with other risks.

Employees who know of a defective machine and do not report it to their employer, and continue to use the machine and are subsequently injured, cannot recover damages.

Employer's Liability to Third Persons

1. Liability in Contract

   Many contracts contemplate vicarious performance by one of the parties; that is, that a party to the contract will not perform personally but that someone else, generally an employee, will perform. Thus, when a construction company undertakes to erect a building, the construction company remains liable for the proper performance of the contract according to specifications. If it hires a sub-contractor to put up the structural steel and the sub-contractor does defective work, the construction company is, none-the-less, liable. So, too, will it be liable should its own employees do improper work. Accordingly, employers are always liable for breaches of contract committed by their employees.

2. Liability for a Wrongful Act

Employers are liable for wrongful acts of their employees committed in the course of employment. An employer needs not have authorized the wrongful act; but is liable even though the particular act was specifically forbidden. All that the injured party need establish is that the employee caused the damage while engaged in the employer's work. If, however, the harm done results while the employee is not engaged in the employers work, as when time is taken off from duties to attend to some personal matter, the employer is not liable; the employee alone is liable. Nor is the employer liable if the employee delegates the work to someone else without the employer's consent.

Examples:

(a) Phelps is employed by Jack's Dairy to drive a milk truck. While proceeding on his appointed rounds, he negligently collides with another vehicle. He has committed a wrongful act in the course of his employment; the owner of the damage car may sue Jack's Dairy and Phelps.

(b) Phelps injures a pedestrian as a result of negligent driving while taking his girlfriend to the movies in the milk truck after hours, and without permission or knowledge of his employer. Phelps alone is liable; Jack's Dairy is not.

It should be noted that when an employer has been held liable for the negligence of an employee, the employer has a right to be idemnified by the employee; that is, deemed worth while, the employer may sue the employee for damages.

Termination of Employment

A contract of hiring and service is terminated by:

(a) mutual agreement,
(b) completion of the work for which the employee was engaged,
(c) expiry of the term of employment,
(d) Death of either party,
(e) bankruptcy of the employer,
(f) dismissal of the employee,
(g) leaving by the employee.

When the period for which the employee was hired expires or the work is completed, the contract is automatically at an end.

Where no time limit is fixed for the termination of the employment, either party may give reasonable notice to the other to end the contract. If pay is bi-weekly, two weeks' notice is required; if by the month, a month's notice; and, if by the year, three month's notice. The notice need not be in writing, but is more easily proved if it is. The employer may, instead of giving, say a month's notice, give a month's pay in lieu of notice.

Grounds for Dismissal Without Notice

1. Misconduct

An employee who is guilty of grossly immoral conduct such as might bring the employer's business into public disrepute, disturb the morale of other employees, or cause the employer direct financial loss, may be dismissed without notice. Conviction for a crime, especially when it involves moral turpitude such as stealing or embezzlement, is also grounds for dismissal. An employer is entitled to have confidence in an employee, and, depending upon the nature of the employment, evidence of a lack of integrity is often grounds for instant dismissal. An employee's deception need cause no financial loss to the employer; it is enough that the employer can no longer trust the worker.

2. Disobedience

Willful disobedience of a reasonable and lawful order by an employee is always grounds for immediate dismissal without notice. The offence is broad enough to include situations where the employee does not directly disobey but acts in a manner inconsistent with the usual devotion to duty expected of employees.

3. Incompetence

The degree of skill an employer may demand depends partly upon the representations of the employee when seeking the position and partly upon the degree of skill ordinarily to be expected of an employee of that category and rate of pay. If employees accept positions on the understanding that they are capable of doing particular kinds of work and it becomes apparent that they cannot do this work satisfactorily, the employer may then dismiss them, without notice. Incompetence as a cause for dismissal, of course, becomes more difficult the longer an employee is retained before being dismissed.

4. Illness

Permanent disability or constantly recurring illness entitles an employer to consider the contract at an end independent of any terms in the contract requiring notice.

Note: Ordinarily an employer does not have the right to dismiss employees without notice, either permanently or for a temporary lay-off, because of adverse economic conditions. Of course, an employee might expressly agree to give the employer the right to do so, or such a right might be implied from the conditions prevailing in a particular industry.

Quitting Without Notice

Employees may leave their employment without notice and be entitled to wages to the date they leave:

1. If the employer breaks the contract.
2. If the employer gives unreasonable or illegal orders and tries to enforce them.
3. If the employer requires employees to work with dangerous appliances after notification of their defect.

Wrongful Dismissal or Leaving Without Just Cause

If the contract is for a definite period and no just cause for dismissal or leaving exists, then dismissal or leaving before the end of that period is wrong.

If dismissed without just cause, the employee may sue the employer for damages which would ordinarily include wages for the required period of notice, as well as pay to the date of dismissal. The employee cannot compel the employer to take the employee back, and the employer cannot compel the employee to return, for such a contract is a contract for personal services and will not be specifically enforced.

The employee cannot wait until the expiry of the period and then sue for the entire wages which the employee thought would be due. It is the duty of the employee to find other employment as soon as possible. If successful in finding a job, the employee should be paid the loss of wages to the date of the new employment and any difference between the old and the new wages to the end of the period for which the employee had contracted with the first employer.

In determining the damages, the first thing the court has to decide is what would be reasonable notice in that particular class of work. The court would take into consideration the money lost due to the dismissal, and the necessary expenses and effort of the employee in trying to find new employment. The court would also take into consideration the type of employment, the length of time worked for that particular employer, and the age, training, and qualifications of the employee. Damages cannot be obtained for injured feelings.

Payment of Wages in lieu of (instead of) Notice

Payment of wages in advance may be substituted by the employer in lieu of notice. The employee may not similarly offer an amount equal to a period's pay in lieu of notice, as the employer would in this case possibly suffer losses other than money, such as unfilled orders or idle machines.

Character References

An employer cannot be compelled to give an employee a reference, but if a reference is given, all relevant facts should be included in order that a new employer will not be misled as to the character and ability of the person presenting the reference.

The Relation of Principal and Agent

An agent is a person employed by another person, called the principal, to represent the principal and to act for the principal in business dealings with third parties. This was once a branch of the master and servant relationship, but because modern business methods have made the work of the agent important and complex, the relationship of principal and agent is treated separately from the relationship of master and servant.

The distinction between agent and employee is one of function. The same person is often both an employee and an agent. In some instances, the terms of employment may be such that an employee's chief duty is to make contracts with third parties on behalf of the employer; a purchasing agent for a company has a duty to order goods on the credit of the company and has authority to do so within the limits of the agency agreement. The agent is none-the-less also an employee of the company and subject to the direction of its senior officers. Other employees have very limited duties as agents of their employer. For example, the driver of a delivery truck is an employee who may act as an agent when taking the truck into a garage for servicing, thereby binding the employer to pay the charges. In many types of employment employees have no occasion to enter into contracts on behalf of their employer and have no authority, express or implied, to do so; for instance a stenographer or lathe operator.

On the other hand, the functions of agency and employment may be completely separate; an agent may not be an employee at all. Thus individuals may be commission agents; that is, persons who receive a commission on the sale price of the goods that they sell for their principal to third persons. They may be under no duty to sell these goods, nor be bound to keep themselves available for their principal, but may simply receive remuneration in the form of commissions for whatever contracts made on behalf of the principal.

Agents are generally classified as general agents and special agents.

General agents have authority to act for their principal in all business matters relating to the business in which the principal is engaged. If placed in charge of a business, the agent has implied authority to do anything which ordinarily may be regarded as falling within the scope of that business.

A special agent is a person appointed to perform a certain act, to do one particular job. An example of this is an auctioneer who is authorized to sell a person's antiques. The auctioneer has no authority to bind the principal except in this particular work.

The principal instructs the agent as to what is to be done, but does not tell the agent how to do everything. The principal leaves many of the details to the agent's judgment, skill, and experience.

The Appointment of an Agent

Individuals capable of entering into a contract in their own behalf may authorize an agent to make contracts in their name. A minor may be appointed an agent for a principal who is an adult, and the contracts made for the principal are as binding as if the principal had made the contracts. At the same time, although a minor may appoint an adult as agent, the minor is not bound by the contracts made by the adult agent except for contracts for necessities which would have bound the minor if the minor had made the contracts. Thus it can be seen, the agent can only make binding contracts for the principal which the principal could have made. If the principal cannot act, the agent cannot act.

The relationship of principal and agent may be established by any one of the following:

1. by oral contract (spoken words only).
2. by written contract.
3. by implication because of the conduct of the parties.
4. by subsequent ratification by the principal, thus creating the relationship of principal and agent.
5. by power of attorney.
6. by necessity.
7. in a partnership agreement.

An Agent's Authority

If individuals adopt or ratify contracts that were made for them without their authority, they become bound by it. If agents make contracts on their own behalf and not as agents, the parties with whom they contracted need not deal with anyone but the agents. For example, a company does not exist until it is incorporated. If someone went out and sold shares in such a company before incorporation, the seller would be personally liable. No one can act for a principal which does not exist.

A power of attorney is a written document appointing a person, called an attorney, to act as an agent for another person. It authorizes the agent to do the things which are specified in the document, and to sign the principal's name to certain stated business papers. A power of attorney should always be used to give an agent authority to sign and endorse cheques, drafts, and promissory notes for the principal.

The Principal's Legal Obligations to the Agent

A principal has certain obligations to the agent. These are:

1. To pay the agent what is agreed to.

2. To pay the agent for expenses legally incurred in the agent's work under the agency contract.

3. If no agreement had been reached about payment, the principal should pay the agent the going wage for that type of work in the area.

(4) To uphold the agent when the agent had acted within the limits of authority under the contract of agency. If the agent has acted without due authority the principal may ratify (approve) the agent's act. If the agent knowingly acted outside the scope of authority, or acted fraudulently, the agent may be liable to the third party for damages.

The Agent's Legal Obligations to the Principal

A written or spoken agreement between two parties establishing the relationship of principal and agent should clearly define the duties and rights of each. For that reason a written agreement is preferable because it helps to prevent misunderstandings.

The duties of an agent to the principal are:

1. To perform the agency contract. To undertake what was agreed to.
2. To perform the work with reasonable care and skill.
3. To have no interest conflicting with the agent's duty. Agents may not sell their own goods to their principal without the principal's assent even though the goods may be exactly what the principal has ordered.
4. To exercise such special skill as the agent professed to have. If the agent claims to have a special skill which the agent does not possess, they agent may be liable, if because of this, the principal suffers a loss.
5. To do the work personally and not to get someone else to do it. Unless the contract provides otherwise, agents must not delegate duties to another party.
6. To account for all of the property belonging to the principal which is obtained. Agents must at all times be prepared to give a complete account of all monies entrusted to them.
7. To accept only one commission on a transaction. The agent receives one commission from the principal. Agents must accept no pay from the third party with whom they are dealing without fully disclosing it to their principal.
8. To keep within the limits of their authority. If agents act beyond their actual authority, they may be liable to their principal for loss suffered by the principal through such unauthorized acts.

Termination of an Agency

A contract of agency, including a power of attorney, like other contracts, may be terminated by:

1. Mutual agreement. Both principal and agent agree to end the relationship.
2. Expiry of the term of employment. The agent may have been employed for a set period of time only.

3. Completion of the business. The agent may have been employed to do a certain job. When that job is done, the principal no longer needs the agent's services.

4. Impossibility of performance.

5. Death or insanity of the principal or agent.

6. Bankruptcy of the principal.

7. Renunciation by the agent. The agent may decide for personal or other reasons that he/she can no longer act as agent and notifies the principal to that effect.

8. Revocation or cancellation by the principal. The principal for some reason may decide to terminate the contract of agency. If circumstances arise which justify the principal in cancelling the contract with the agent, the principal must notify third parties who knew of the agency relationship. Otherwise the principal may be held liable for any later acts of the agent. In such case a principal generally sends a written notice to each customer. At the same time, the principal may introduce a new agent to these customers if the principal is continuing in the same business.

Employer and Independent Contractor

If the employer retains the right to direct what work is to be done but not how it shall be done, the employee is not a servant but is known as an independent contractor. An independent contractor undertakes to do a specified piece of work, such as building a house. The job is to produce a specified result, and the means employed are the independent contractor's own affair.

It is not always easy to distinguish between an independent contractor and an employee. Occasionally the two functions are combined in a single person: the owner of a building may hire a building contractor to do certain repairs for a fixed price, but the agreement may also stipulate that the repairs are to be made under the supervision of the owner. Such circumstances may make it difficult to decide whether the person doing the work is primarily an independent contractor or an employee.

When a person who undertakes work is clearly an independent contractor, liabilities incurred in the course of accomplishing the task are almost entirely the independent contractor's own responsibility.

Example: Hendricks engages Acme Construction Company to build a department store on a downtown lot. In the course of the construction work, Mr. Rogers, a passer-by on the sidewalk below, is injured by a falling piece of wood. The accident is attributable to the inadequate protection for pedestrians provided by Acme Construction. Acme, and not Hendricks, would generally be liable for the injury.

On the other hand, Hendricks does have the limited duty to take reasonable care to hire a competent contractor; also, if the nature of the work undertaken is such that the possibility of damage to adjoining property is apparent - for example, blasting with dynamite - or if the work is inherently dangerous to third parties, Hendricks has an obligation to satisfy himself that the contractor takes reasonable precautions to avoid such damage.

Simple Employment Contract

_____(NAME)_____, the employer, hereby employs _____(NAME)_____, the employee, to perform duties below named, in consideration for which the employer will pay the employee at the rate of _____ dollars per _____ and, in addition, compensate the employee for any other expenses incurred by the employee in the carrying out of the employee's duties.

In consideration of the above name payments, the employee agrees to carry out the following duties:_____

_____ _____ _____ _____

In all of the employee's work for the employer, the employee shall act faithfully, honestly, and to the best of the employee's ability. At no time shall the employee's performance fall below the recognized standard for the employee's trade.

This agreement shall take effect on ____(DATE)____, ____(MONTH)____ 19_____ and continue until ____(DATE)____. (Substitute, if desired, "_____ days after written notice of termination is given by one party to another.") On the last day of employment, the employer shall pay all compensation due the employee, and such payment shall be in full satisfaction of all claims against the employer by the employee under this agreement.

_____(SIGNATURE)_____

Executive Employment Agreement

AGREEMENT, dated as of _____, 19_____, by and between _____ (hereinafter referred to as the "Company", an Alberta corporation, and _____ (hereinafter referred to as the "Employee").

The Company desires to secure the services of the Employee in a general executive capacity, and the Employee is willing to accept such employment upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, and of the payments to be made by the Company, and the services to be rendered by the Employee, as hereinafter provided, the parties hereto hereby agree as follows:

1. The Company will and hereby does employ the Employee to serve in a general executive capacity, and the Employee will and hereby does accept employment by the Company to perform such duties and services as may from time to time be assigned or delegated to the Employee by the Board of Directors of the Company (hereinafter referred to as the "Board").

2. For the one-year period commencing on the date first above written, the Company will pay the Employee and thereafter will pay or will cause to be paid to the Employee the sum of _____ per year, in pro rata monthly installments at the end of each month, as full compensation for all rights granted and all services to be performed by the Employee under this Agreement. Such payments will be subject to such deductions as are from time to time required to be made persuant to law, government regulation, or order, by agreement with, or consent of, the Employee. Such compensation is subject to annual or more frequent review by the Board and may, in the sole discretion of the Board be increased from time to time.

3. The term of this Agreement will commence on ___(DATE)___ and will continue until five years thereafter, provided, however, that the obligation of the Company to pay the compensation provided in Section 2 hereof will terminate immediately upon either the total disability or the death of the Employee. As used herein the term "total disability" shall mean the inability of the Employee to perform normal duties as certified to by a licensed physician chosen by the Company.

4. The Employee will, in the course of employment, have access to the methods of conducting the Company's business including, without limiting the generality of the foregoing, its methods of obtaining customers, customer lists, and other confidential information. The Employee's position as an executive places the Employee in a position of trust and confidence with respect to the business of the Company. For the foregoing reasons the Employee will

(a) faithfully and diligently do and perform such acts and duties in connection with the employment hereunder as may be specified and required by the Board;

(b) neither directly, or indirectly, own, manage, operate, control, be employed by or connected in any manner with the ownership, management or control of any business, or venture, competing with the business now or hereafter conducted by the Company and its subsidiaries;

(c) not engage in any other activity which is or may be contrary to the welfare, interest, or benefit of the business now or hereafter conducted by the Company or its subsidiaries; and

(d) nor at any time in the future, directly or indirectly, disclose or furnish to any other person, firm or corporation the methods of conducting the business of the Company or any of its subsidiaries; furnish to any person, firm or corporation a description of any of the methods of obtaining business, or promoting, marketing or of obtaining customers therefore, and/or disclose to any person, firm or corporation any confidential information acquired by the Employee during the course of employment by the Company or any of its subsidiaries.

5. (a) As between the Employee and the Company or any subsidiary all ideas, creations, and properties, whether or not furnished by the Employee and whether or not conceived, and/or developed during regular working hours, created, developed, or used in connection with the Company's business, will be the sole and absolute property of the Company or any of its subsidiaries for any and all purposes whatever in perpetuity. The Employee will not have, and will not claim to have, under this Agreement or otherwise, any right, title or interest of any kind or nature whatsoever in or to any such ideas, creations, and properties.

(b) ideas, creations, and properties furnished by the Employee to the Company or any of its subsidiaries will be the Employer's own and original creation except for materials in the public domain and will not to the best of the Employee's knowledge or belief violate or infringe upon any right, copyright, trademark or right of privacy, or constitute libel or slander against or violate any other rights of any person, firm, or corporation.

6. The Employee will, at any time during employment or after its termination, at the Company's request and without charge to the Company, but at the Company's expense, sign all requests for assignments or documents of any nature and do any other acts that may at any time reasonably be deemed necessary by the Company to vest in the Company the entire right, title and interest (or as much thereof as is possible in the circumstances) in and to the items referred to in Section 5.

7. The Employee will also, at the request and expense of the Company, assist the Company by testifying:

   (a) in any proceeding in which the Company is or may be concerned with respect to the items referred to in Section 5, or any one or more of such items, including, without limitation, any copyright infringement, or other copyright litigation; and

   (b) in any other litigation or proceeding in which the Company is or may be concerned involving any matter in respect of which the Employee has any information or knowledge, whether or not related to the items referred to in Section 5.

8. Upon the termination of employment under this Agreement, the Employee will deliver to the Company any property of the Company which may be in the Employee's possession, including materials, memoranda, notes, records, reports, or other documents.

9. If the Employee should fail or refuse to perform the obligations hereunder, the Company may, in addition to such other rights as it may have, terminate its obligations hereunder forthwith and without notice and without prejudice to any right the Company or any of its subsidiaries has or may have hereunder with respect to securing performance by the Employee of the obligations under Sections 4, 5, 6, 7, 8, 10 and 11 hereof.

10. The parties hereto recognize that immediate and irreparable damage will result to the Company and its subsidiaries, their businesses and properties, if the Employee fails or refuses to perform the obligations under this Agreement and, notwithstanding any election by the Company or any of its subsidiaries to claim damages from the Employee as a result of any such failure or refusal, the Company may, in addition to any other remedies and damages available, obtain an injunction in a court of competent jurisdiction to restrain any such failure or may specifically compel performance by the Employee of the obligations under Sections 4, 5, 6, 7, 8, 10 and 11 hereof. The Employee represents and warrants that in the event of the termination of employment as herein provided, the Employee's experiences and capacities are such that the Employee can obtain employment in business engaged in other lines and/or of a different nature, and that the specific enforcement of the provisions of this Agreement will not prevent the Employee from earning a livelihood.

11. The Employee will execute and deliver all such other and further instruments and documents as may be necessary, in opinion of the Company, to carry out the purposes of this Agreement, or to confirm, assign or convey to the Company or any of its subsidiaries any ideas, creations, manuscripts, proofs or properties referred to in Subsection (a) of Section 5 hereof.

12. All notices hereunder shall be in writing and will be deemed to have been given if delivered personally or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as respectively indicated or to such other addresses as shall be indicated by a notice hereunder:

(a) If to the Employee, addressed to the Employee at: _____

_____

with a copy to the Employee's legal counsel, at _____

_____

(b) If to the Company, addressed to it at: _____

_____

13. Any provision or provisions hereof found to be prohibited by law will be ineffective only to the extent of such prohibition and will not invalidate any other provision of this Agreement.

14. This Agreement will bind the heirs, executors, administrators, successors and assigns of the Employee, and the duly authorized legal representative of the Employee will, upon request of the Company, sign any and all documents reasonably necessary to carry out the purposes of this Agreement including, without limitation, any and all applications for copyright registration and assignments thereof necessary to vest in the Company title to any copyright which Employee is required to assign to the Company by the terms of this Agreement. This Agreement will also bind, and inure to the benefit of, any successor to the business of Company (including any company to which all of the assets and business of the Company is assigned) provided such successor is an affiliate of the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first hereinafter written.

Attest:

By _____
(EMPLOYER)

_____
(EMPLOYEE)

Exercise 1

1. (a) In what way(s) is the relationship of principal and agent different from that of master and servant?

_____

_____

_____

_____

(b) In what way(s) is the relationship of master and servant different from that of employer and independent contractor?

_____

_____

_____

_____

2. (a) Explain how one might be both an agent and an employee.

_____

_____

_____

_____

(b) Give an illustration of a position of this type in your own community.

_____

_____

3. Name three occupations in your locality in which the contract of employment is probably only an oral contract.

(1) _____

(2) _____

(3) _____

4. Name three occupations in your locality in which the contract of employment is probably covered by a written contract.

   (1) _____

   (2) _____

   (3) _____

5. When are employees entitled to leave their employment without notice and be entitled to wages to the date they leave?

   (a) _____

   _____

   (b) _____

   _____

6. What can an employer do if an employee is guilty of negligence, or of misconduct which would injure the employer's business?

   _____

   _____

   _____

7. If an employee is dismissed without just cause, the employee may sue the employer. In assessing the damages in such a case, what would the court take into consideration?

   _____

   _____

   _____

   _____

   _____

   _____

8. State four obligations which an employer has with regard to his/her employee.

   (1) _____

   (2) _____

   (3) _____

   (4) _____

9. State four obligations which an employee has with regard to his/her employer.

   (1) _____

   (2) _____

   (3) _____

   (4) _____

10. State seven ways in which a contract between employer and employee can be terminated.

    (1) _____

    (2) _____

    (3) _____

    (4) _____

    (5) _____

    (6) _____

    (7) _____

11. What is a special agent?

    _____

    _____

    _____

12. What is a general agent?

13. The principal does not tell the agent how the agent is to do everything. Because the principal does not do this, what is the principal relying on for the details?

14. Under what conditions is the principal liable for the torts of the agent?

15. What is an independent contractor?

Exercise 2

In the space provided below each of the following cases, write whether the employer-employee relationship is that of:

(1) master and servant,
(2) principal and agent, or
(c) employer and independent contractor.

1. Finion operated a general store. When he went on vacation he left Plant, a clerk who had worked for him for five years, in charge. What is the relationship between Finion and Plant while Finion is on vacation?

_____

2. Ames hired Edgar to paint his house. Ames supplied the material and equipment, told Edgar exactly how the work was to be done, and agreed to pay Edgar by the hour for his work. What is the relationship between Ames and Edgar?

_____

3. Hopkins agreed to build a fence for Gray for a certain price. The work was to be done as directed by Gray and under his supervision. What is the relationship between Hopkins and Gray?

_____

4. Black took his family on a month's cruise and arranged with Lawson to have Rogers paint Black's house during their absence. What is the relationship between Black and Lawson?

_____

5. Currie wanted his house painted with two coats of paint of a certain colour and brand of paint, and he wanted the painting completed by a certain date. He asked several painters for their estimates of the cost and accepted Crawford's bid. What is the relationship between Currie and Crawford?

_____

Exercise 3

An agent must act for the principal in the utmost good faith, and must not allow personal interests to conflict with duty. In one or two lines each, give eight rules which apply to the duties of an agent to the principal.

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

5. _____

_____

6. _____

_____

7. _____

_____

8. _____

_____

Exercise 4

1. While in Larson's store, Marlow, a customer, was injured by falling boxes that had been carelessly stacked by a salesclerk. Is Larson liable to Marlow for the damages? Explain.

2. An employee of a dry-cleaning company, through carelessness, used the wrong cleaning fluid and ruined Mrs. Sanford's dress. Was the company liable for the damages? Explain.

3. Newbury, while driving on business for his principal, was fined $25.00 for speeding. Is the principal legally bound to reimburse Newbury? Explain.

4. Noble gave Meskil authority to sell a truck for him for $1900. Meskil sold the truck for $1950. He gave Noble $1900 and kept the additional $50 for himself. May Noble, on learning the facts, recover $50 from Meskil? Explain.

5. If an electrician's helper carelessly connected wiring in a building, and a fire started, burning the building down, could the electrician be required to pay the damages? Explain your answer.

6. Carlson, who managed a large wholesale business for Stevenson, hired Foley as a lawyer to help him with certain documents which were necessary for the operation of the business. Stevenson knew about this but said nothing. However, after accepting the services of Foley for several months, Stevenson refused to recognize the appointment, claiming that Carlson had no authority to engage the lawyer and refused to pay the legal fees. Will Stevenson have to pay Foley for the work he has done? _____ Explain.

7. Alger, Benoit's agent, had authority to sign notes, accept drafts, and to manage all of Benoit's affairs. Alger later endorsed certain notes which were payable to Benoit and invested the money for Benoit during Benoit's absence while away on a month's vacation. When Benoit returned he took action to have these investments cancelled, claiming that Alger had no authority to endorse the notes. Will Benoit be successful in this action? _____ Explain.

_____

_____

_____

_____

_____

_____

8. Herman, although having no authority to do so, accepted an offer from Cook in Allen's name on March 13 while Allen was away on a business trip. On March 20th Allen returned and the same day ratified Herman's acceptance. On March 27th Cook learned that Herman had no authority to act from Allen and attempted to withdraw the offer. Will Cook be able to do this? _____ Explain.

_____

_____

_____

_____

_____

_____

END OF LESSON 17

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

St. Serv. 9-91

UNION CONTRACTS

Because an individual is generally at a disadvantage in bargaining with a large corporation, the practice developed many years ago whereby the employees of large firms would join together and bargain as a group. Associations of this type are commonly called unions. Until the latter part of the nineteenth century, such associations were frequently outlawed and their organizers could actually be prosecuted. In modern times the law not only permits the organization of unions, but in many instances actually encourages them.

Unions, like other associations, elect representatives and delegates to act on behalf of the entire group. These delegates therefore will be empowered to make contracts for the benefit of all of the members of the union, and it is important to understand how they obtain the legal right to represent the employees of any particular factory or mine or other industry.

The Labour Relations Act is almost the exclusive source of law regulating relations between employers and employees represented collectively by trade unions in Alberta. This Act is administered by the Alberta Labor Relations Board, which is a government agency that performs duties of both an administrative and quasi-judicial nature. The Board is composed of a chairperson, a vice-chairperson and part-time members who represent organized labor and management. The make-up of the Board of Industrial Relations demonstrates the major roles played by labor and management in labor relations in Alberta.

The Labor Relations Act concerns itself with the rights of employees, employers, and trade unions, and provides for certification and collective bargaining, conciliation, and the regulation of strikes and lockouts. It provides for collective agreement arbitration, voluntary binding arbitration, emergency dispute settlement, and unfair labor practices. It also protects the right of employees to be members of trade unions and to participate in the lawful activities of trade unions. It not only establishes procedures for unions to acquire the right to represent employees and to bargain on their behalf, but it also sets out the requirements for collective bargaining in good faith between employers and bargaining agents, providing procedures to assist them in the bargaining, such as conciliation and mediation, and regulating strikes and lockouts. It also requires that collective agreements contain a provision for the settlement of disputes during the life of the collective agreements.

The right to belong to a trade union is secured by the workers under the Labor Relations Act which states:

1. An employee has the right

   (a) to be a member of a trade union and to participate in its lawful activities, and

   (b) to bargain collectively with the employer through a bargaining agent.

The Criminal Code of Canada makes it an offence to dismiss a person for union activity.

The term "employee" for purposes of union membership, means a person employed to do skilled or unskilled manual, clerical or technical work. The definition is qualified by a list of people who are specifically excluded from union membership. These are:

Architects
Chartered Accountants
Chiropractors
Dentists
Engineers
Insurance Salesmen
Land Surveyors
Lawyers
Doctors
Teachers (have a special type of collective bargaining)
Naturopaths
Optometrists
Podiatrists
Real Estate Salesmen
Securities Salesmen
Veterinarians
Those employed in Domestic Service
People employed in Agriculture (farm workers, horticulture, hunting, or trapping

In addition to these classes of people who are denied the opportunity of union membership, the basic definition of who may be unionized in Alberta is further qualified to include the following: managers or supervisors, or any other person whom the Labor Relations Board feels either

1. exercises management functions, or

2. is employed in a confidential capacity in matters relating to labor relations.

Practically speaking, the usual test of "management functions" is whether or not individuals are in a position to hire and fire people. If yes, then they are considered to be management personnel and not open to union membership.

Also ineligible for union membership are such people as:

1. A taxi-driver who operates under a contract with a dispatching company;

2. Self-employed truck drivers;

3. Independent contractors: a person who is not under the complete and direct control of an employer.

It is interesting to note that under the Federal Labor Code, a professional employee may join a union. It also makes such bargaining rights available to truck owner-operators and to fishermen engaged on a "share of the catch" basis. The Federal Labor Relations Board has the discretion to include in a bargaining unit employees whose duties include the supervision of other employees, but persons performing managerial functions and employed in a confidential capacity in matters relating to industrial relations are excluded. As mentioned, however, the Code applies only to employees involved in a federal undertaking.

By virtue of the Civil Service Act of Alberta, provincial government employees ar permitted to perform an "association," and from that association a committee for the purpose of discussing with the Civil Service Commission any matters affecting their general welfare and conditions of employment. However, they are not permitted to take part in a strike to enforce their demands.

The right to represent employees is granted to a union when it has been certified by the Labor Relations Board. Application must be made to the board, and the union must satisfy the board that it represents more than fifty per cent of the employees in the particular bargaining unit. If it appears that somewhere between forty-five per cent and fifty-five per cent of the employees of a particular bargaining unit are members of the union, the board will direct that a representation vote be taken. If it appears that more than fifty per cent are members, then the union will be certified as the bargaining agent for all of the employees of that particular bargaining unit.

Most labor relations legislation provides against unfair practices as follows:

No employer may:

1. Interfere with a union or contribute to it;

2. Refuse to employ or otherwise discriminate against any person on the ground of union membership;

3. Make it a condition of employment that a person should not be a union member;

4. Use any threat to compel an employee not to become a union member or officer.

Unions Seeking Lawful Recognition

The history of labor unionism in Canada goes back to the beginning of the nineteenth century, and has been closely linked to developments in other countries — most notably that of Britain and the United States. In these early times the first trade unions were transplanted by immigrant British workers. This early labor movement of the 1800's consisted of locals (as branches are known). Small independent organizations were formed among the skilled handcraft workers of Canadian urban centres. These were the predecessors of today's large craft unions. For example, there were the boot and shoe workers' "labor circles" in Lower Canada during the 1820's, as well as the tailors' "lodges."

Following the American Civil War in the 1860's, Canadian labor looked increasingly to the United States for its ideology, organization, policies, funds and affiliations. This association grew closer, paralleling the growing integration of the two countries' economies. Presently almost 80 per cent of organized workers in Canada belong to "international" unions. An international union is one with its headquarters and the great majority of its members in the United States.

By the start of the twentieth century, Canada's unions had grown to such size and strength that they were prepared to attempt to alter legislation so it would promote their own interests. To accomplish this goal, locals banded together to form powerful lobbies (which were groups to pressure elected representatives). Their efforts were successful and brought about the first major piece of federal labor legislation passed in Canada - the Industrial Relations and Disputes Investigation Act of 1907. This Act set out the major principles that formed the basis for both the recognition of trade unions and for their participation in charting the economic course of the nation. With this initial success, lobbying has continued to be the main political weapon of unionism in Canada.

Aims of Unionism

"United we stand, divided we fall" has been the rallying cry of organized labor since the beginning of the Industrial Revolution. On many occasions legislation was introduced in the British parliament in an attempt to prevent workers from combining to press their demands on company owners. In 1825 the right to organize was won in Britain, and in 1872 this same right was conferred on Canadian workers by the federal parliament.

The primary purpose of unions is to organize workers into effective groups to conduct collective bargaining with the employer on such matters as wages, hours of work and general working conditions. Furthermore, some unions provide recreation and other benefits or facilities to their members.

The Canadian trade union movement has pursued a different course from that of its British counterpart. Since the 1890's, the British movement has aimed at actual political power by allying itself with the British Labor Party which on several occasions has elected enough members to form the government. In Canada, labor has sought to influence government mainly by presenting proposals to the federal cabinet through the office of the Canadian Labor Congress (C.L.C.), and by lobbying provincial Cabinets against measures which it feels are discriminatory or regressive. Efforts at direct political representation by Canadian unions have been made, notably through the Cooperative Commonwealth Federation (C.C.F.) and its successor, the New Democratic Party (N.D.P.). On the whole, union members in Canada have remained independent when voting and the N.D.P. has never succeeded in electing a large number of members to the House of Commons.

Types of Unions

There are three basic types of unions:

1. The "company union" is organized solely among the workers of a particular company or group of interlocking companies. It can be independent and aggressively strive to attain its members' goals. However, if it can be demonstrated that it is dominated or influenced by the employer, it will not be recognized as the legal bargaining agent of the workers. This type of union is becoming increasingly rare. Where there is a company union, the wages and working conditions established are sometimes of a higher level than what has

been obtained from other companies through intense bargaining or even by costly and bitter strikes. Thus, there is little reason for the workers within a company union to seek outside representation.

2. The "craft union" is sometimes referred to as "horizontal." Its members are all skilled in a certain trade and are spread across the country - for example, the Parities and Decorators, or the Bakers and Confectioners unions. Many of these unions originated in Canada while others were imported by immigrants to this country. After the U.S. Civil War, most of these became affiliated with the American Federation of Labor (A.F. of L.) through its Canadian counterpart, the Trades and Labor Congress (T.L.C.).

3. The "industrial unions" recruit their members over an entire industry, regardless of the separate crafts represented, taking in skilled and unskilled workers alike. An early example of this type was the Nova Scotia Coal Miners Union (1879) which included not only miners but also wharf laborers, railway workers and iron founders. Later, under its new title of Provincial Workmen's Association, it also took in glassblowers, retail clerks, shoemakers, and many other classifications. The modern industrial unions (for example, the United Steelworkers) developed in Canada in the 1920's out of a distrust among some workers for the comparatively exclusive, highly skilled craft unions. The craft unions extended no welcome to the large body of relatively unskilled workers then being hired by the new mass production factories. Other examples of modern industrial unions, or "vertical" unions, are the United Auto Workers and the Mine, Mill and Smelter Workers. These unions, affiliated with the Congress of Industrial Organizations (C.I.O.) in the United States, became grouped under its Canadian equivalent, the Canadian Congress of Labor (C.C.L.).

The A.F. of L. and C.I.O. merged in the United States in 1955. This made possible a similar joining of the craft and industrial unions in Canada, and in 1956 the T.L.C. and the C.C.L. formed the present ruling body, the Canadian Labor Congress. While 80 per cent of the member unions of the C.L.C. are "internationals" affiliated with the A.F.L.-C.I.O., increasing stress is being laid on the autonomy of the Canadian components. The C.L.C. takes an active part in the International Confederation of Free Trade Unions, which is the worldwide body representing all organized workers outside the Communist block.

How Unions Work

It is at the local level that unions are first organized, and it is there that they perform their most basic function, collective bargaining. Collective bargaining simply means that workers form a group or organization and deal collectively with their employer in discussing and agreeing on wage rates and working conditions.

Before a union can accomplish this, there are a number of legal requirements to be met. The vast majority of workers in Canada come under provincial jurisdiction, and while the provisions of the law vary somewhat from province to province, they are in most essentials, very similar. A limited number of workers - those engaged in inter-provincial transportation, communication, and a few other industries - are under federal jurisdiction.

The first step in the formation of a union is its organization. The groups of workers that the union is to represent must be identified - the plant workers, the office workers, the maintenance workers, people in a particular trade, or a combination of these.

An invitation is extended to the people in the unit asking them to become members of the union. Those who wish to join, sign an application form and make an initial payment of dues or an initiation fee to indicate their seriousness.

When the organization has the support of a majority of the people in the unit, an application is made to the Labour Relations Board seeking certification. Certification means that the union is granted official recognition by the government body and is entitled to enter into collective bargaining on behalf of the people in the unit. The law also requires the employer to negotiate with the union and to "bargain in good faith."

Whether or not all employees are required to join the union depends on the terms agreed upon between the workers and the employer. If there is a closed shop, then the employer agrees to hire only workers who are already members of the union. A more common provision is what is known as the union shop. This means that workers, usually after an initial probationary period, usually 30 days, are required to join the union.

A modification of this is called the Rand Formula or Agency Chop. This means that employees are not required to actually join the union but they are required to pay union dues. This plan is based on the philosophy that all employees benefit from the activities of the union and should, therefore, contribute to its maintenance. It should be remembered with reference to all these plans that the union is required to obtain and prove the support of a majority of the workers before it can attain a position to gain such provisions.

The local union thus established would probably be part of a national or international union. Thus workers of the Twisty Pretzel Company might form an organization which would become Local 123 of the International Pretzel Bender's Union.

The members of the local union elect their own officers - president, vice-president, secretary, treasurer, etc. — who are in charge of the affairs of Local 123. The members pay dues, part of which remain in the local and part going to the international union to pay for the services and assistance it provides to the local.

This service may take various forms. Most national and international unions have a number of specially trained technicians on their staff. These people are able to provide assistance in negotiations with the employers and are usually backed by economists and other research specialists on the union staff. The national or international union may conduct an educational program for all its members. Practically all such unions have regular publications to keep the membership informed on developments of concern to them. The affairs of the national or international union are governed by periodic conventions, to which each local union is entitled to send delegates.

The Union Meeting

It is at the union meeting that the union makes its policies, and where the members communicate with one another. The goal of the union meeting should be to conduct the business of the union in an orderly and meaningful manner. Minorities must be given an opportunity to present their case, but the will of the majority should prevail. The meeting should be conducted according to parliamentary procedure, the object of which is to establish a set of rules by which people may get things done democratically at the meeting. These rules allow for free debate, for equal rights for all members, for only one subject to be under discussion at a time, and they ensure that, while the will of the majority prevails, the minority must be heard.

The manner in which the meeting concentrates on one subject at a time is by dealing with motions. A motion is made by obtaining recognition from the chair. Only one main motion may be amended. If there is no objection, the maker of the motion and the seconder can accept the amendment as part of the motion. Otherwise, the amendment must be discussed and voted upon before the main motion is considered. If the amendment is defeated, the original motion is discussed and voted on. If discussion wanders, a point of order can be raised. Should a member feel that the chairperson has made an improper ruling, the member may appeal the decision of the chair. The chairperson then steps down, and the members vote, after the person appealing and the chairperson have expressed their viewpoints on the matter.

This represents only the very basics of parliamentary procedure, and those who wish to familiarize themselves more thoroughly should refer to "Bourinot's Rules of Parliamentary Procedures" or "Robert's Rules of Order." These are standard guides for parliamentary procedure in Canada.

Duties of Union Officials

1. The Union Chairperson

   The union chairperson is the primary spokesman for the union, and acts as chairperson at union meetings. It is up to the chairperson to see that the meeting keeps moving, that the members understand at all times what is going on, that the proper rules of parliamentary procedure are being followed, that there is a full discussion of the issues, and that the minority is protected.

2. The Union Secretary

   It is the responsibility of the union secretary to take the minutes of the union meetings, to prepare them for presentation at the next union meeting, and to handle correspondence.

3. The Union Treasurer

The treasurer is responsible for the finances of the union. From time to time the treasurer must prepare and present financial reports, and must see to it that the membership fully understands the financial situation of the union. Usually expenditures are authorized at local union meetings, although regular payments are often dealt with by the treasurer as they come due. Cheques usually have to be signed by at least two officers of the union. The union treasurer is usually assisted by union trustees, whose duty it is to audit the accounts of the union on a periodic basis and to report their findings to the membership.

4. Union Committees

Most unions have various committees which are responsible for specific matters. Examples are the negotiating committee, which is responsible for preparing, organizing, and conducting negotiations with management; and the grievance committee, which is responsible for investigating and processing grievances.

5. The Union Steward

The union representative in the day-to-day operation of the union is the shop steward. Stewards are the key to a strong union because they handle the day-to-day problems of the employees, many of which are solved before they become serious. The steward is also the key to good communications within the union since, to the average inactive union member, the shop steward is the only contact the member has with the union.

Collective Bargaining

Once the local union is established, has proven that it has the support of a majority of the workers concerned, and has been officially certified, then the stage is set for collective bargaining to begin.

The most common procedure is for the members of the local union to hold a meeting, or more often a series of meetings, to decide on proposals which will be made to management. They also select some of their members to act on the bargaining committee. They may decide to ask the union with which they are affiliated to provide the assistance of an experienced negotiator or a specialist on such technical subjects as pensions.

The contract proposals advanced by the union may cover a wide variety of subjects. Such matters as wages and hours are, of course, the most common, but they are by no means the only ones. Suggestions may be advanced with regard to vacations, statutory holidays, a pension plan, medical insurance, seniority provisions governing promotions, and a grievance procedure. The bargaining committee they have elected then arranges to meet the representatives of management. The spokesperson for management may be the head of the company, the director of the personnel department, or other company officials, depending, as a rule, on the size of the company.

Bargaining is often a slow process. The proposals advanced by the union may be met by counter-proposals by the company and there is a period of discussion and often concessions by each side. Periodically the two groups engaged in bargaining report to their supervisors. In the case of the union this means that the bargaining committee reports to a membership meeting where it may receive additional instructions.

In the vast majority of cases voluntary agreement is finally reached between management and the workers. The terms of the agreement are then written into a contract and this governs the wages, hours and other conditions of employment in the particular company for a specified period -- normally one, two or three years.

If the two parties find it impossible to reach agreement, then methods are provided in the labor law of the province, and in federal legislation, for government assistance.

In many instances the first stage is the appointment of a conciliation officer. This is an official of the government's labor department who will meet with the union and with management to explore the nature and extent of their differences, and who may also bring the two groups together in an effort to have them agree. If successful, a contract is signed. If this procedure fails, the discussions move on to the next step.

This is most frequently the establishment of a Conciliation Board which is normally composed of three people -- one nominated by the company, one by the union, and the third, the chairperson selected by the other two members. If they cannot agree, the chairperson will be appointed by the Minister of Labor.

The Board conducts hearings and listens to the arguments of both sides and then makes a report. The findings of the board are not binding on either party; they are intended rather to influence a voluntary agreement. If such an agreement is reached, a contract is signed and the matter ends there. If there is no agreement, the workers are free to go on strike.

The decision as to whether they will strike rests, of course, with the workers concerned, and they vote on what action should be taken. While strikes naturally attract a good deal of public attention, the fact is that in about 97 per cent of the cases, agreement is reached and a contract signed without any strike action.

Once the contract is in effect, one of the most important sections is that concerning a method for the settlement of grievances. The contract is intended to provide an orderly plan for dealing with most employee-employer relationships, and this is particularly true as far as grievances are concerned.

Worker's grievances may have to do with any one of a great number of matters. They may feel that they are not receiving the proper rate of pay for the specific job they are working on; that they are not being allowed the vacation that they are entitled to; that they were not paid for overtime worked; or that there is something wrong with the conditions under which they have to do their job.

The contract sets forth the course to be followed in processing the grievance. As a rule, at the first stage, an effort is made to settle it in the department where the worker is employed. In this step the key people may be the foreman of the department and the union shop steward. The shop steward is one of the workers who has been chosen by fellow employees, through the union, to represent the interests of those who work in a particular section.

If a settlement is not reached there, then the matter is taken to a higher level; and so on up through the ranks of management and involving more senior union officers or officials. If, after this process has been exhausted, no agreement is reached, then the whole matter is usually placed before an outside third party, called an arbitrator, or before several people on an arbitration commission, and the decision then given is binding on the company, the employee and the union.

Arbitration:

The Powers of Arbitrators

The powers of arbitrators are set out in the Labor Relations Act:

1. Subject to subsection (2) no arbitrator, arbitration board or other body shall by its award alter, amend, or change the terms of a collective agreement.

2. Where an arbitrator, arbitration board or other body determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject matter of the arbitration, the arbitrator, arbitration board or other body may substitute such other penalty for the discharge or discipline as to the arbitrator, arbitration board or other body deems just and reasonable in all the circumstances.

   The arbitrator or the chairperson of the arbitration board or other body is empowered

   (a) to summon and enforce the attendance of witnesses and to compel them to give evidence in the same manner as a court of record in civil cases and to produce such documents and things as it deems requisite to the full investigation or consideration of any matter within its jurisdiction;

   (b) to administer oaths and take affirmations of witnesses;

   (c) to enter any premises where work is being done or has been done by employees or in which an employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to it and inspect and view any work, material, machinery, appliance or article therein and question any person under oath in the presence of the parties or their representatives concerning any matter connected with the differences;

(d) to authorize any person to do any thing that the arbitrator or chairperson of the arbitration board or other body may do;

(e) and to report to the arbitrator or arbitration board thereon;

(f) to correct in any award any clerical mistake, error, or omission.

The Arbitration Hearing

The date for the hearing is fixed by the chairperson of the arbitration board in consultation with the parties and their nominees and representatives. The hearing will usually begin with the arbitrators inquiring as to whether there are any objections to the constitution of the arbitration board, and whether there are any preliminary objections as to whether the grievance can be arbitrated. The sequence of events then usually is as follows:

1. Opening statement (if any) by the initiating party.
2. Presentation of evidence and witnesses by initiating party.
3. Cross-examination of initiating party's witnesses.
4. Opening statement (if any) by defending party.
5. Presentation of evidence and witnesses by defending party.
6. Cross-examination of defending party's witnesses.
7. Summation and argument by both parties.

This is the customary order, but it is not invariable. The arbitrator personally may vary the order, or do so at the request of either party. In any event, the order in which the facts are presented does not imply that the burden of proof is more on one side than the other, for both parties must try to convince the arbitrator of the justice of their position.

Selection of Arbitrators

The usual procedure in labor arbitrations involves a tripartite board. Each party makes an appointment to the board, and the two appointees attempt to agree on a chairperson for the board. If they cannot agree, the matter is referred to the Minister of Labor, and an appointment is made from a list of arbitrators maintained by the government of Alberta.

The Arbitration Award

After the arbitration hearing, the arbitrators usually adjourn the matter for consideration and delivery of their award. Some collective agreements contain a time limitation within which an award must be delivered. If this is the case, and it is anticipated that an award may not be made within the time limit, it is advisable for the parties to agree to expand the time within which the award may be delivered. Otherwise, if an award is not made within the time limit, the arbitrators may lose jurisdiction over the grievance. The decision of a majority of the members of an arbitration board is a decision of the arbitration board. Copies of the award are to be filed with the Alberta Board of Industrial Relations and served personally, or by double registered mail, upon the parties. The award of a board of arbitration is binding upon the parties bound by the collective agreement concerned.

Advantages of Arbitration

An arbitration is the reference of a difference for determination, after a hearing in a quasi-judicial manner, by a person or people outside a court of law. It is thought that the advantages of arbitration are:

(a) it is less expensive than a law action,

(b) the parties to the dispute can choose their own judge,

(c) better feelings are likely to be created in an arbitration than in a lawsuit.

Evidence in Arbitration

Although rules of evidence need not be stringently observed in labor arbitrations, problems of proof do arise in labor arbitrations, and consequently, questions of admissibility must often be considered. Problems regarding evidence usually arise in labor arbitrations interpreting the collective agreement, and in this context, there are a number of concepts regarding evidence which should be considered:

1. The Parole Evidence Rule

   Simply stated, the parole evidence rule prohibits the introduction of oral or written evidence which varies or contradicts the terms of the written contract. Evidence concerning other simultaneous negotiations, or statements of a person's intent will not be admitted if the purpose of such evidence is to show that the contract does not mean what it says. However, where the contract is ambiguous, the rule does not apply, as such things as acts or statements by the parties may be admitted to explain the meaning. Such evidence is not admissable to add to or detract from or vary the terms of the agreement, but it is admissable to determine in appropriate circumstances what the terms are.

2. Past Practice

Past practice may be defined as a course of action knowingly adopted and accepted by the parties over a significant period of time. It becomes significant in arbitration where one of the parties produces evidence to support its claim. Evidence of past practice is usually used to establish that an express contractual provision has been varied, as evidenced by the practice. Past practice may also be used to show the intent of the parties to the contract where the contractual terms are not clear. It is a basic conception in contract law that the parties to a contract can amend an agreement by conduct, as long as this process of amendment does not conflict with an agreed procedure for amendment that is described in the contract.

Union - Member Relations

The union, as a rule, has the exclusive right of determining qualifications for the granting of membership and also the right to expel members for specific offences, such as:

1. Default in payment of dues, where these are not deducted by the employer;

2. Threatening or assaulting union officials;

3. Committing some fraud on the union - e.g., misappropriation of union funds, or stuffing a ballot box;

4. Disobeying official union executive orders.

Often the union constitution will provide penalties for specific offences, ranging from reprimand, or a small fine, to expulsion.

Unions, as well as employers, are not permitted to discriminate against persons with respect to their race, religion, color, nationality, ancestry, or sex. If a union does discriminate, and it can be proven, it will not be certified. Furthermore, unions are not permitted to refuse membership to, or to refuse to continue membership of, a person in a trade union simply because that person refused to make, or does make, a contribution or expenditure, directly or indirectly, to any political party or to any candidate for political office.

When union members feel that they have been wrongfully dismissed by an employer, or improperly dealt with by their union in the matter of support against the employer, or has been expelled from the union, and they have exhausted any and all internal union appeal procedures available, they may apply to the courts to obtain:

1. An injunction restraining the union or employer from acting in a certain manner towards the members.

2. A judicial declaration of the rights of the parties concerned coupled with a Court Order that the situation be corrected. In the case of a union member who has been suspended the court may uphold the member's application for union support and order that the union reinstate the member.

3. Damages. The common funds of the union are liable on any judgment recovered against the union, but union members are not individually liable unless they are personally sued along with the union and found liable by a court.

Unfair Labor Practices

Unfair labor practices refers to conduct by either an employer or a union, or the member of a union, which has a negative effect on the organization and/or operation of trade unions, or on the operation of an employer's business. It is not necessary that you be a member of a certified trade union, or that your employer have a collective agreement with a union, for you to lay a charge against your employer for committing an unfair labor practice. If you are laid off, fired or demoted as a result of your union activities your employer can be prosecuted for this action. The union you belong to will be willing, as a rule, to press your complaint and will obtain legal help to present your case to the Labor Relations Board. If the Board can be satisfied that your charge is justified it will likely order that you be reinstated in your position and paid any wages you may have lost.

If your union does not press your case, for whatever reason, you can do so yourself, although it would be a good idea to consult a lawyer to represent you before the Labor Relations Board. The procedural steps involved in presenting an unfair labor practice complaint are exactly the same for an individual, a union or an employer.

1. By Management

The worker's right to organize has been protected by statutory provisions in the Labor Relations Act and other legislation, and in particular, by those provisions dealing with unfair labor practices by or on behalf of employers. The term "unfair labor practice" refers to the following activities:

(i) Conduct by an employer which interferes with the formulation or administration of a trade union constitutes an unfair labor practice by management. However, the union must be able to satisfy the Labor Relations Board that such interference has indeed taken place. In order to do so the union must have strong evidence to present to the Baord.

(ii) Financial or other support given by an employer to a trade union constitutes an unfair labor practice. It is permissable for an employer to allow a trade union representative to confer with the employer during working hours without a deduction of time or wages for the time so occupied by the trade union representative.

(iii) Refusal to employ a man or woman because he or she is a member or officer of a trade union.

(iv) The discharge of an employee for the reason that the employee is, or proposes to become, or seeks to induce any other person to become a member or officer of a trade union, or has participated in the promotion, formation or administration of a trade union.

(v) Imposition of any condition by the employer in an employee's contract of employment which seeks to restrain an employee from exercising the rights granted to the employee under the Labor Relations Act in an unfair labor practice.

(vi) Intimidation of an employee in any way is an unfair labor practice. It is an offence to intimidate by dismissal or threat of dismissal, or by any other kind of threat of penalty, or by promise of inducement, or by a wage increase or promise thereof, or by altering any other terms or conditions of employment, or by any other means which compels or induces an employee not to become, or to cease to be, a member or officer of a trade union.

It is important to remember that to obtain any relief, an allegation of an unfair labor practice must be proven by the complainant union, and that although the Labor Relations Board does not demand the same degree of proof as does a court of law, nevertheless it must be convinced that the offence has taken place before it will grant any relief in the form of reinstatement of the worker and/or payment of lost wages.

Unions have most of their difficulty involving unfair labor practices at the organizing level where an employer's place of business has never been unionized before. For example, a union may sign up a few people, get an employee of the business to speak to the other employees and then, all of a sudden, those people who have expressed support may find themselves laid off or possibly fired. At this point the union may put in a certification application to the Labor Relations Board, which may be challenged by management. The employer may be busy behind the scenes checking on the loyalty of the employees and hiring replacements who will vote against the union.

At the hearing before the Labor Relations Board, if one is held, the employer may also present several employees who had previously signed up but who now express a complete lack of support for the union, perhaps using such words as "I did not know what I was signing," "I was tricked or coerced into signing," or "I wish to withdraw." The employer could slowly undermine the 50.1% majority support figure required by the union to obtain certification. If the union can present sufficient evidence to the Board to satisfy it that there have been definite violations, such as new wage offers, increased vacation periods, shorter work hours, or any other benefit offered to employees once the union has applied for certification, the employer will be punished. However, if the employer is careful the union may not be able to prove its allegations of unfair labor practice and the Board will either refuse to certify the union, or possibly order that a representation vote be taken amongst the employees to determine their wishes with respect to the union.

In the matter of unfair labor practices the union is not completely dependent upon the Labor Relations Board hearing which may well be held too late to help the union. If the union has a strong case against the employer, and can prove that it is suffering "irreparable damage" as a result of management activities, it can apply to the Court of Queen's Bench for an injunction to restrain the offending conduct until the trial of the action. The advantage of this remedy is that it can provide relief much more quickly than an application to the Labor Relations Board alleging an unfair labor practice. The disadvantage is that a court of law must be satisfied that

the union is suffering some irreparable damage and it may be harder to convince the court of the need for immediate action than it would be to satisfy the Labor Relations Board that an unfair labor practice is being committed, as the court is bound by the strict rules of evidence and the Labor Relations Board is not.

2. By Unions

Unions, as well as management, are capable of being prosecuted for the commission of unfair labor practices. For example:

(i) Unions are not permitted to conduct organizational activities at a place of employment during working hours. This provision causes considerable difficulty where the employer's place of business is in a remote area as in the case of a mining or logging operation.

(ii) Trade unions and people acting on their behalf are not permitted to support, encourage or condone any activity designed to restrict or limit production or services. Employers make use of this fact when they feel that the union is deliberately encouraging production slowdowns or putting too much stress on work to rule procedures.

(iii) Unions are not permitted to use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing anyone to become or to continue to be a union member. Management may use such an accusation at a certification hearing in an attempt to discredit the union's claim to have signed up a majority of the employees affected. If the employer can produce one or two employees who will say that they were coerced or intimidated in any manner into joining the union, the Labor Relations Board may have doubts about some of the others and order a representation vote, or they may possibly refuse to certify the union.

Strikes

Where there is a collective agreement in force between a company and a union, strikes are prohibited during the term of the contract. However, a strike can be legal if proper procedures are followed when collective bargaining has failed to produce an agreement. The first step toward declaring a legal strike is for the union to conduct a vote amongst the members in the unit concerned. This vote is by secret ballot, and before a strike can be declared there must be majority support. Where there is a vote in favor of a strike, the union must go on strike within three months following the vote. If they do not establish a strike within this period they are precluded from doing so. It is also mandatory that the employer be given 72 hours' written notice of the commencement of any strike. If a mediation officer has been appointed to look into the dispute, no strike is permitted until that officer has handed in a report. Assuming the nation has complied with all these statutory provisions, it may then begin to persuade people not to enter the employer's place of business, or handle or deal in the employer's products. The usual first step taken by the union is to begin picketing at the employer's place of business.

Picketing and Injunctions

In situations where employees are engaged in a lawful strike, in addition to stopping work and withholding their services from the employer, they may also seek to communicate the nature of their dispute to other members of the public. This conveyance of information is the technical meaning of picketing. In some cases, however, picketing can be intimidating and may be designed to prevent the flow of persons and goods into the plant that is being struck. If the picketing reaches the stage where the police are unable to control the situation without fear of serious violence taking place, the court may be called upon to issue a restraining order or injunction which will either limit the number of persons who can lawfully picket or prohibit picketing altogether. Failure to obey the court order by anyone may make that individual liable for contempt of court and, if convicted, liable further to a fine, imprisonment or both.

Under the laws of this province employees can legally picket only at or adjacent to their employer's factory or place of business. The employees cannot picket at the premises of suppliers or customers of the employer. This type of activity, called secondary picketing, is improper. Again, the court injunction is used to prohibit this conduct. An injunction in this situation is much easier to obtain than in the situation where the premises being picketed are those of the employer.

Picketing involves the attendance of persons (pickets) usually carrying placards, who are either on legal strike or locked out, at their employer's place of business for the purpose of persuading or endeavouring to persuade other persons not to:

(i) enter the employer's place of business;

(ii) deal in or handle the products of the employer; or

(iii) do business with the employer,

There are many cases on the point of what constitutes a place of business. For example:

(i) It is illegal to picket the premises of an employer who is not involved in a labor dispute. A great many employers claim that they are not involved in a particular strike and that the pickets are illegal. For example, there may be a legal strike at a plant which manufactures specific products. If that plant has no storage or warehouse facilities it may stock its inventory at another company's warehouse. It is questionable whether the union can extend picketing to the other company's warehouse.

(ii) It is possible to picket at various premises other than those where the employees are actually on strike, provided that all the premises picketed are owned by one company.

(iii) Place of business does not include places of operation of companies affiliated to the one that is being struck.

(iv) A self-loading, self-propelled barge owned by a company against which there was a legal strike was held to be a place of business.

The object of the restrictions on persuasive picketing in those situations where there exists a legal strike or lockout is to protect the liberty of persons to carry on their legitimate business, and to use their business premises without interference except when they are employers who are involved in a legal strike or lockout. A union is permitted to conduct "informative picketing", that is, to disseminate information only, and not to persuade. But management will be very quick to seek an injunction against the union if, in their opinion, the object and effect of such informative picketing is to persuade the public not to do business with that employer.

Picketing, if too aggressive, could well result in an employer preferring criminal charges against individual union members. Some of the possible charges are:

(i) Intimidation - an employer could allege intimidation in that pickets were wrongfully attempting to keep the public from entering the place of employment by threatening force. It is also intimidation to block or obstruct a highway by picketing.

(ii) Mischief - pickets must take care not to tamper with, damage or destroy any property of the employer. They must not obstruct or interfere with the lawful use or operation of the employer's property. It is not mischief for workers to take part in legal picketing, but it is important for them to keep in mind possible charges.

(iii) Trespass - strikers are permitted to picket entrances to a place of employment where there is a legal strike, but pickets must not enter company property. It is possible to be charged with common trespass if a picket strays onto company property and does not leave when told to do so by responsible company officials.

(iv) Common Assault - strikers will be advised to restrict their activities to the carrying of picket signs because, if they so much as touch members of the public seeking to enter the employer's place of business by crossing the picket line, they are liable to be prosecuted for common assault.

Although most unions will usually provide legal counsel for a member who has been charged with a criminal offence while on picket duty, it should always be remembered that the picket, if found guilty, will also acquire a criminal record.

Lockouts

A lockout involves the closing down of a place of employment by the employer, and includes a suspension of work, or a refusal to continue to employ employees, for the purpose of compelling workers to agree to certain conditions of employment. Although a shutdown for valid economic reasons is justified, the employer is required to prove that a discontinuance of work is not a lockout. Lockouts are prohibited during the term of a collective agreement. As with unions and strike notice, management must give 72 hours written notice to the union of a lockout. If a mediation officer has been appointed there can be no lockout until the officer has made a report.

Strike Breakers

As one of the major purposes of a strike, insofar as employees and unions are concerned, is to bring economic pressure to bear on the company in the form of lower production and lost business, the company will often counter by attempting to keep its operation going at all costs. This will include hiring temporary replacements, called by the various parties either strike breakers or scabs, and hiring outside agencies to make delivery of supplies and finished goods to provid the services once performed by the strikers. There exist a few companies today in business solely to provide strike-breaking services. These services include insuring the continued flow of production and raw materials and finished products, and also providing security to the plant that is being struck. In many cases strike breaker companies have been instrumental in allowing an employer to survive or ''break'' a strike.

Exercise 1

Fill in the blank spaces in each sentence. Only one word is requird for each space.

1. The Labour Relations Act is almost the exclusive source of law regulating relations between _____ and _____ represented collectively by trade unions in Alberta.
2. The right to belong to a trade union is secured by the workers under the _____ _____ Act.
3. The Criminal Code of Canada makes it an offence to dismiss a person for _____ activity.
4. Provincial government employees in Alberta are not permitted to take part in a _____ to enforce their labor demands.
5. The union must satisfy the Labor Relations Board that it represents more than _____ per cent of the employees in a bargaining unit.
6. The first step in the formation of a union is its _____.
7. _____ means that the union is granted official recognition by the Labor Relations Board.
8. The affairs of the national or international union are governed by periodic conventions, to which each local union is entitled to send _____.
9. Once the union contract is in effect, one of the most important sections is that concerning a method for the settlement of _____.
10. The decision of an arbitrator is _____ on the company, the employee, and the union.
11. The _____ _____ rule prohibits the introduction of oral or written evidence which varies or contradicts the terms of the written contract.
12. Unions, as well as employers, are not permitted to _____ against persons with respect to their race, religion, color, nationality, ancestry, or sex.

Exercise 2

1. What government agency administers the Labour Relations Act?

   _____

2. Practically speaking, what is the usual test employed when deciding whether someone is engaged in management functions?

   _____

   _____

   _____

3. The primary purpose of unions is to _____

   _____

   _____

   _____

4. How is the term "employee" defined for purposes of union membership?

   _____

   _____

   _____

5. What is collective bargaining?

   _____

   _____

   _____

6. Define the following terms:

   (a) closed shop - _____

   _____

   _____

   _____

   (b) union shop - _____

   _____

   _____

   _____

   (c) agency shop - _____

   _____

   _____

   _____

7. What should be the goal of every union meeting?

   _____

   _____

8. Very briefly, describe the function(s) of the following union officers:

   (1) chairperson _____

   _____

   _____

   _____

   (2) secretary _____

   _____

   _____

   _____

(3) treasurer _____

_____

_____

_____

(4) steward _____

_____

_____

_____

9. Give four examples of grievances which an employee may charge against the employer.

(1) _____

(2) _____

(3) _____

(4) _____

10. What is the function of an arbitrator?

_____

_____

_____

_____

11. When does *past practice* become a significant factor in an arbitration proceeding?

_____

_____

_____

_____

12. Give four specific offences which may result in the expulsion of a union member from the union.

    (1) _____

    (2) _____

    (3) _____

    (4) _____

13. When union members feel that they have been wrongfully dealt with by their union, what assistance might the court provide for them?

    (1) _____

    (2) _____

    (3) _____

14. What does the term *unfair labor practice* refer to?

    _____

    _____

    _____

15. Define the following:

    (a) a strike - _____

    _____

    _____

    (b) an injunction - _____

    _____

    _____

    (c) a lockout - _____

    _____

    _____

    (d) a strike breaker - _____

    _____

    _____

Exercise 3

1. Suppose that nine hundred out of one thousand employees wished to be represented as a group, but one hundred chose not to do so. How would a union be certified to represent all of the employees? Explain.

2. If there were one thousand employees in a particular factory, would they be abl to make the best contract of employment if they bargained separately with the factory owner or if they bargained as a group? Explain.

REMINDER

If your mark on the final test is less than 40%, **no credit** will be given for your year's work.

Your final course mark will then be based on the final test only.

END OF LESSON 18

LESSON RECORD FORM

3430 Law 30
Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____

Correspondence Teacher

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

St. Serv. 9-91

EMPLOYEE WELFARE LEGISLATION

In the social upheaval that followed the industrial revolution, and before the emergence of trade unions, the employer had nearly all the advantage in bargaining power; often workers had either to accept the proposed terms of employment or to see their families starve. The movement for reform in working conditions stressed the economic inequality between employer and employee; reformers urged that society had a duty to protect the weaker contracting party. The arguments of the reformers, however, went directly against nineteenth century ideas on freedom of contract as a pillar of a larger political philosophy of laissez faire. The freedom of contract doctrine asserted that society functions most efficiently when contracting parties are left free to exact whatever terms their bargaining power will command and when individuals are left to their own resources in resolving their conflicts of interest without the intervention of any outside arbiter.

The reform movement had, therefore, to proceed against formidable opposition by the proponents of freedom of contract. Nevertheless, the pressures of a changing society were irresistable, and they resulted in a series of acts being passed by parliament. These statutes marked a new role for the state — active intervention on the side of the employees. Initially the reform found expression in statutes specifying the minimum age of workers, maximum hours of work, the presence of safety devices for machinery, for maintenance of safe premises in which to work, and the liability of employers when an employee was injured in the course of employment. These statutes were only a beginning. A review of the statute law we are to consider briefly in this section illustrates the degree to which our legislatures have qualified freedom of contract between individual employers and employees.

To the extent that employees are now represented by trade unions, the disparity in bargaining power between an employer and his employees has ben largely redressed; contracts bargained for by trade unions protect the interests of the employees. There remain, however, important categories of work in which employees typically are not unionized. In these types of work the employee still negotiates his contract of employment on an individual basis with the employer. Accordingly, legislation enacted for the welfare and protection of employees continues to afford a minimum standard of working conditions for many people.

Because it imposes conditions on the rights of the employer and employee to enter into a contract of employment, labor legislation is, generally speaking, a lower priority in comparison to civil rights, and provincial legislatures are authorized to make laws in relation both to local works and to property and civil rights. Power to enact labor legislation has become, therefore, largely a provincial prerogative, under which a large body of legislation has been enacted affecting the employment relationship on such issues as working hours, minimum wages, the physical conditions of work-places, apprenticeship and training, wage payment and wage collection, labor-management relations and worker's compensation.

Federal Labour Laws

Federal legislation applies to the following activities as outlined in the Canada Labour Code:

> In the Act "federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including:
>
> (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;
>
> (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other or others of the provinces, or extending beyond the limits of a province.
>
> (c) a line of ships connecting a province with any other province, or extending beyond the limits of a province;
>
> (d) a ferry between any province and any other province or between any province and any other country other than Canada;
>
> (e) airports, aircraft or a line of air transportation;
>
> (f) a radio or television broadcasting station;
>
> (g) a bank;
>
> (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and
>
> (i) a work, undertaking or business outside the exclusive legislative authority of provincial legislatures.

The above definitions cover persons employed by railways, shipping companies and transport companies; the fishing industry; employees of the federal civil service and corporations such as the Canadian Broadcasting Corporation; banks; and uranium and atomic energy production. The comprehensive Canada Labor Code applies to these employees and covers most of the areas dealt with by provincial legislation including wages, hours of work, overtime, vacation pay, safety and workers rights. The Code also deals with the establishment and maintenance of labor-management relations.

General power is left with the federal Minister of Labor to enforce the various aspects of the Code and police any violations. An employee who believes a violation of the Code has occurred should contact the nearest office of the federal Department of Labor, which in many towns and villages is located in the Federal Office Building housing such facilities as the post office and customs. Complaint officers are available to inquire into the matter and enforce any decision they may reach.

The Department of Labour was established in 1900 to aid in preventing and settling labour disputes. Its work today falls into four main areas:

1. Industrial Relations — the Canada Labour Code provides that employees and employers have the right to organize and bargain collectively and that trade unions may be certified as sole bargaining agents for employee groups. Trade unions and employers are required, on notice, to bargain collectively in good faith. It also provides for assistance by conciliation boards in reaching collective agreements.

2. Fair Employment Practices — it prohibits discrimination in employment on race, national origin, colour or religion, discrimination by trade unions in regard to membership or employment, the use by employers of employment agencies that practice discrimination, and the use of advertisements or inquiries in connection with employment that express, directly or indirectly, any limitation, specification or preference as to race, colour, religion or national origin.

3. Labour Standards — the Canada Labour Code sets both standard and maximum hours of work. The overtime rate (one and a half times the regular rate) must be paid after eight hours in a day and 40 hours in a week, to a maximum of 48 hours a week. Hours may be averaged when an employee's schedule of hours varies from day to day or week to week because of the nature of the work. If the Minister of Labour is satisfied that circumstances justify the additional hours, he may issue a permit allowing an employee to exceed the maximum hours.

   Employees are entitled to a two-week vacation with pay each year and a holiday with pay on each of the eight general holidays, or substitutes for them.

   Under the Code's provisions respecting individual dismissals, every employee with three month's service is entitled to two weeks' notice of termination of his employment. In lieu of such notice, the employee is entitled to two weeks' wages for each completed year of employment, up to a maximum of 40 days' wages. However, the employer is not required to give severance pay to an employee who is dismissed for just cause or to a person who, on termination of employment, is entitled to a retirement pension.

   The maternity protection provisions grant maternity leave and ensure job security to women absent from work because of pregnancy.

   The Code prohibits an employer from paying men and women employees at different rates if they work in the same establishment at equally demanding jobs under the same or similar conditions.

4. Safety of Employees — the Code provides for all the elements of a complete industrial safety program; obliges employers and employees to perform their duties in a safe manner and authorizes the making of regulations for dealing with occupational safety problems; complements other federal laws and provincial legislation; authorizes advisory committees and special task forces to assist in developing the program under continuous consultation among federal and provincial departments, industry and organized labor; and provides for

research into causes and prevention of accidents and for an extended safety education program. Regional safety officers and federally authorized provincial inspectors apply the safety regulations. Regulations are currently in force governing coal mine safety, elevating devices, first aid, machine-guarding accident investigation and reporting, noise control, hand tools, fire safety, temporary work structures, confined space and adequate lighting.

Unemployment Insurance

In 1941 the Canadian Parliament passed the Unemployment Insurance Act which established an unemployment insurance fund to which employers and employees must contribute. The scope of this legislation is very wide but it does not apply to workers in certain occupations such as domestic servants or to those who are self-employed. Both the employer and employee contribute to the fund. Employers deduct employees' contributions from their paychecks and send them into the fund along with the employers' own share. Unemployment insurance benefits are payable out of the fund to workers who have contributed in the past and who are currently unemployed. As the amount of the contribution, the length of time one is able to collect, and the amount of the benefit tends to be changed with each new parliament. You should check with the local Unemployment Insurance Office in your area for any questions you may have on the practical aspects of collecting benefits from the fund. It should be noted that the federal government contributes to the fund by paying for its administrative costs.

Upon termination of employment the employee must obtain a record of employment which the employer must provide. You may immediately apply for unemployment benefits, but there is a waiting period before you will receive any money. If you quit or are fired, the waiting period may be extended.

Upon application, you will receive an active job search statement. It is a requirement of the plan that you must be available and actively looking for work unless you are sick, pregnant, or retired. The statement requires you to list all the companies and persons who have interviewed you for a job as well as the dates of those interviews and their results. Failure to remain actively looking for work may result in your payments being cut off, or in a demand for repayment of money you have already received.

If you have a question as to whether you are covered by unemployment insurance, the Department of National Revenue will give a ruling, as collection of premiums is its responsibility. Simply contact the local income tax office. This is especially important if you have any doubt about whether you are self-employed or an employee. The mere fact that you are paid by the hour or week does not make you an employee. The test is whether or not you control your own working conditions.

Provincial Labor Laws

Power to enact labor legislation is largely the right of the provinces, because the British North America Act of 1867 gave to the provincial legislatures the authority to make laws in relation to local works, undertakings, property, and civil rights in the province. Under this authority the provincial legislatures have enacted a large body of laws affecting working conditions and the relationship of employer and employee.

The Department of Manpower and Labour is responsible for the orderly administration of all regulations designed to provide proper working conditions and adequate levels of pay. Through trades qualification regulations, certified skilled workers are given the opportunity to earn higher incomes. At the same time, employers are given the assurance that they are hiring qualified workers.

The Board of Industrial Relations

The Board of Industrial Relations administers the Employment Standards Act which has jurisdiction over minimum wage payments, and other conditions of work affecting the welfare of the workers of the province.

The Employment Standards Act also contains provisions for industries to establish their own hours of work, minimum wages, holidays with pay, and working conditions, by mutual agreement of employees and employers within the industry. However, the conditions thus mutually agreed upon cannot be less favorable than those set out in the Act.

Minimum Wage

The minimum wage is set by the Alberta Board of Industrial Relations. It is changed periodically and it may differ for different groups. All workers must receive at least the minimum wage. If you are paid on commission or by piece work or receive a salary plus tips, your employer must figure your salary on an hourly basis. If you have earned less than the minimum wage during the month, your salary must be adjusted so that you are paid the minimum wage.

It is an offense under the Employments Standards Act not to pay the minimum wage or to agree to work for less than the minimum wage. Certain groups may be exempt from the wage requirements. These include some seasonal and temporary workers, students on training programs and those on an approved "work experience" program.

If you are being paid the minimum wage, your employer cannot charge you for the use, repair or cleaning of a uniform which you are required to wear, nor can the employer make you pay for an article which you accidentally damaged. If you are being paid more than the minimum wage, your employer can charge you for the uniform and for accidental breakage (as long as this does not reduce your wages to an amount lower than the minimum rates).

Hours of Work Regulations

The legislation which controls the number of hours of work of employees is contained in the Employment Standards Act. The main provision here is that the hours of work of an employee shall not exceed

(a) eight hours in a day, or

(b) 44 hours in each consecutive period of seven days of which not more than six days shall be working days.

The hours of work of an employee permitted may be exceeded where

(a) an accident occurs, or

(b) urgent work is necessary to a plant or machinery, or

(c) other unforeseeable or unpreventable circumstances occur, but only as necessary to avoid serious interference with the ordinary working of an undertaking.

In addition to these exceptions, certain specific industries are exempted. These include mining, manufacturing, logging, construction, the food industry, transportation industry, etc. In other words, all the common servicing industries which work around the clock or at least operate outside the usual eight hours in an average working day are exempt from this section of the Act.

Another important aspect of the Employment Standards Act is that which deals with the notice of hours of work.

(1) An employer shall notify his employees

(a) of the hours at which work begins and ends, and

(b) when work is carried on by shifts, of the hours at which each shift begins and ends, by posting notices in conspicuous places on the work premises or other suitable place or by such other method as the Board of Industrial Relations may approve.

(2) Where work is carried on by shifts, an employee shall not be required to change from one shift to another shift without

(a) at least 24 hours' notice in writing of the change of shift, and

(b) at least 8 hours of rest between shifts, except in the case of urgent work to be done to machinery or plant or in case of unforeseeable or unpreventable circumstances.

If you are an adolescent aged 12 to 15, you may be employed as a:

(a) retail store deliverer of small wares
(b) office clerk or messenger
(c) retail store clerk
(d) newspaper, flyer or handbill deliverer,

so long as the job is not likely to have a detrimental effect on your life, health, education, or morals.

You can only work with the written consent of your parent(s) or guardian. You may not work between the hours of 9:00 p.m. and 6:00 a.m. and may work no more than 2 hours on a school day or 8 hours on any days in which you aren't required to attend school.

If you are a young person aged 15-18 working in

(a) retail sales
(b) gasoline sales
(c) hotels or motels

you may not work between the hours of midnight and 6:00 a.m. and may only work from 9:00 p.m. until midnight if someone over 18 is with you constantly. In all other jobs, you can work from midnight to 6:00 a.m. but only if someone over 18 is with you constantly.

You can only work with your parent(s) or guardian's consent. Certain laws will further restrict what work you do. For example someone under 18 can not serve liquor.

Vacation Pay

An employer must give to each of his or her employees after each year's employment an annual vacation of at least two weeks with regular pay. That vacation must be in one unbroken period of two weeks, unless otherwise requested by the employee. If the employment of an employee is terminated, the employer must pay him or her vacation pay as follows:

(a) Employees who have worked less than one year must be paid an amount equal to 4 percent of their regular pay for the period of their employment.

(b) Employees who have worked at least one year must be paid an amount equal to their vacation pay plus four percent of their regular pay for the period of their employment which has elapsed since they last became entitled to an annual vacation.

If the employer and employee cannot agree upon the date for commencing the vacation, the employer must give to the employee at least one week's notice in advance. The payment must be paid to the employee at least one day prior to the beginning of the vacation, or upon termination.

General Holidays

Apart from an annual vacation, employees in the Province of Alberta are entitled to eight general holidays, which are New Year's Day, Good Friday, Victoria Day, Dominion Day, Labor Day, Thanksgiving Day, Remembrance Day, and Christmas Day. If employees are required to work on a general holiday, they must be paid their regular pay plus time and one-half, or otherwise they must be paid their regular pay and given a holiday with pay at some other time. If they are not required to work on a general holiday, they cannot be forced to work on another day of the week that would otherwise be a day of rest, unless they are paid their normal wages in addition to all other wages owing to them.

However, these rules do not apply if:

(a) Employees have not worked for their employer for at least thirty days during the preceding year;

(b) Employees do not work on a holiday when required or scheduled to do so;

(c) Employees have absented themselves from work without the consent of their employer on either the last regular working day preceding or their first regular working day following the general holiday.

If these employees work on the general holiday, they must be paid at least their normal wages.

Voting

According to the Canada Elections Act, every employee is entitled to vote in an election. He or she is entitled to four consecutive hours for that purpose or, if the hours of his/her employment do not allow for four consecutive hours, the employer must allow such additional time for voting as would be necessary to provide those four consecutive hours. Furthermore, the employer may not make any deductions from pay for the absence during that four hours. However, the employer may choose the hours of voting.

Seniority

Generally, in the absence of a collective agreement, an employer need not respect seniority rights. Such rights would include matters such as delayed layoff or prior right to recall. The employer is bound to respect such rights only if it is a term of the individual contract of employment, and that is extremely rare. If it is a matter of custom and usage in the particular trade, this may be an implied term of the contract.

Notice of Termination

The Employment Standards Act allows the Board of Industrial Relations to make orders respecting written notice of termination of employment or wages instead of such notice. The board has passed such an order providing for written notice of at least seven days if the employment has lasted for more than three months but less than two years, or fourteen days if employment has lasted longer than two years. The wages to be paid instead of notice are to be the regular wages which would have been paid during that seven or fourteen day period.

The notice of termination must indicate the date of issuance and be served personally or by registered mail. If the employer continues to employ the employee after the date specified for the termination, then the notice is void and is of no effect. There are, however, a large number of exceptions where no notice of termination is required when:

(a) an employee is employed for a definite term or task for a period not exceeding twelve months upon completion of which the employment terminates;

(b) an employee is temporarily laid off;

(c) an employee is terminated for just cause;

(d) an employee is laid off after refusing an offer by the employer of reasonable alternative work;

(e) an employee refuses work made mandatory through a seniority system.

Note: The minimum is 14 days if you have worked more than 2 years. However, this is a minimum only. Most people are entitled to more notice and courts have awarded several months notice in many cases. The major consideration in determining the amount of notice required is how long it would take you to find a similar job at a similar salary. Your age, your position, and length of service with your employer and the current job market will be factors here.

Statement of Earnings and Deductions

The Employment Standards Act requires that the employer must give each employee a statement at the end of each pay period which states the following:

(a) the hours worked;

(b) the amount of wages paid at a straight time rate;

(c) the amount of wages paid at an overtime rate;

(d) the amount of any bonus or living allowance paid;

(e) the amount of any vacation pay paid;

(f) the amount of any general holiday pay paid;

(g) the amount of any sum of money paid instead of termination of employment;

(h) the amount of each deduction from the earnings of the employee and the purpose for which such deduction was made.

Furthermore, an employee may demand from the employer a detailed statement as to the computation of the amount of wages and any bonus or living allowance. As well, if the employer terminates the relationship, the employee may demand a written statement of the dates during which time the employee was employed.

An employer is also required by the Act to maintain in the place of business the following payroll records of employees:

(a) the hours worked or on duty each day;

(b) the wages paid;

(c) the date of commencement of employment;

(d) name, age, and residence;

(e) each annual vacation granted, showing:

(i) the dates of commencement and completion

(ii) the period of employment covered by the annual vacation

(iii) the amount of vacation pay given

(f) the amount of money paid instead of vacation, and pay upon termination of employment;

(g) the amount of money paid for general holidays;

(h) the amount of each deduction from the earning of the employee and the purpose for which the deduction was made;

(i) a copy of any notice of termination of employment.

Your employer has no general right to discipline you. However, your contract of employment may, and many do, contain provisions, express or implied, allowing your employer to suspend you or dock you pay for certain conduct. In the absence of such provisions, however, your employer has only 2 options. The employer can treat the conduct as cause for summary dismissal (without notice) or can allow you to continue working. In that case, the remedies are limited to warnings or a notation on your work record.

Where your conduct is such as to indicate to your employer that you no longer intend to honour your employment contract, your employer will be justified in firing you without notice. The exact nature of this conduct is difficult to define. Willful disobedience, dishonesty, or disloyalty regarding essential elements of your job will generally be grounds for dismissal.

Trivial incidents will not be sufficient, although a series of minor incidents may mount up and be considered willful disobedience. It should be noted that if your employer has allowed certain conduct to go on without comment, this may preclude the employer from later firing you for similar acts.

Every worker has a contract of employment. It may be completely in writing, unwritten or include both written provisions and ones implied by conduct or custom. Your employer cannot unilaterally change any essential term of that contract without your consent. If you agree to a change in the contract, that term forms part of a new contract between you and your employer.

You may refuse to accept this change, however, and if your employer insists on the new term, it brings your employment contract to an end. You do not have the power to continue working on the old terms unless your employer agrees to this. Your employer has, by the change in terms, constructively dismissed you without cause and therefore, must give you notice or pay instead of notice.

Examples of actions from which constructive dismissal may be implied include a salary decrease, a demotion, a drastic change in job description or a transfer. If it is demanded that you submit your resignation this may also be constructive dismissal and the employer may be required to give you notice.

If you are fired with what you believe to be insufficient notice, you may sue for "wrongful dismissal." The court will review the factors to determine what is adequate notice in the circumstances and award damages based on this amount.

You should remember, however, that the court, in any award, will require you to mitigate your damages — look for another job. You are not required to take any job, but may seek one comparable to your old job and suitable to your qualifications. If you find one, your award will be decreased by the amount you earned during the "notice" period. Failure to look for a job or refusal of a suitable job offer may also cause the court to decrease your damages. You are entitled to the Employment Standards Act requirement of 7 or 14 days notice, however, regardless of earnings from another job.

Discrimination

The Individual Rights Protection Act prohibits discrimination on the basis of sex, religion, nationality, race or age. The age provision only applies if you are between the ages of 45 and 65. Thus if you feel you have been discriminated against because of your age, you will not have an action under the Act if you are under 45. An employer may not specify a preference in any of these factors when advertising for a job. You cannot be required to answer any questions about your religion, race or national origin on a job application. The employer may not refuse to hire or promote you or pay you a different wage because of any of the factors mentioned.

Where there are bona fide occupation qualifications which make a group unsuitable for a job, this discrimination may be allowed. However, this is strictly interpreted (e.g. a woman cannot be refused employment merely because the work site lacks women's washrooms or is isolated).

The Individual Rights Protection Act provides that no employer shall:

(a) employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work, or

(b) employ a male employee for any work at a rate of pay that is less than the rate of pay at which a female employee is employed by that employer for similar or substantially similar work.

If you have been discriminated against, you may be able to recover any wages you lost or other expenses incurred because of the discrimination. You will rarely be given the job you were refused, especially when it has already been filled. In certain circumstances, you may be given a promotion you were refused.

Complaints should be directed to the Alberta Human Rights Commission. They must be made within 6 months of the discriminatory conduct. The Commission will attempt to negotiate a settlement between you and the employer in question. If the conciliation fails, the Commission may convene a Board of Inquiry to investigate the matter and make any appropriate award. The Commission may drop your complaint at any time during the process.

The Canada Human Rights Act operates in much the same manner as the Alberta Act but applies to federal employers and employees. It prohibits discrimination in hiring, including advertising and job applications, in promoting employees and in wages. Discrimination is forbidden on many grounds including race, national or ethnic origin, age, sex, marital status and physical handicap. Complaints should be made to the Canada Human Rights Commission. They may investigate your complaint, attempt conciliation or convene an inquiry. Enforceable orders may be made to alleviate the situation complained of, prevent future discrimination or compensate the victim.

There are indications that a civil lawsuit may be available in the area of discrimination. This may have several advantages to the Commission route. The action would not be controlled by the government, it may not be restricted to the grounds in the Acts and the damages available may be greater than those that would be awarded under the Act. This is a relatively new area, however. The boundaries of the action and its use in Alberta are uncertain. Anyone considering this alternative should contact a lawyer.

The Worker's Compensation Act

Each of the Canadian provinces has a Worker's Compensation Act. In any occupation to which the Act applies, workers who sustain personal injury by accident arising out of and in the course of their employment, or who are disabled by specified industrial diseases, are entitled to compensation. The only exceptions are: where the worker is disabled for less than a stated number of days; or where the injury is attributable solely to the serious and wilful misconduct of the worker and does not result in death or serious disablement.

The Worker's Compensation Board has the duty and power to inspect all places of employment to see that all machinery and appliances are safe, that proper safety precautions are taken to prevent accidents and that the safety appliances prescribed by law are in use, or to determine what more suitable safety devices are necessary. These inspectors also look into the health and sanitary condition of places of employment. If an employer fails, or neglects, or refuses to install safety devices, etc., the place of employment may be closed by order of the Board, or other penalties can be imposed.

The Board has the right to determine the amount of assessments and levies upon the employers which will cover the expenses of administration of the Board, provide money for compensation, provide for education in mine rescue work and first aid work. In addition, the Board provides medical aid for the injured worker.

The Worker's Compensation Act is a type of collective liability, that is, compensation is payable by employers collectively. The industries covered by the Act are divided into groups and the employers are collectively liable for the payment of compensation to the workers employed in the industries in that group.

Employers are required to contribute to what is known as the Accident Fund and compensation and medical aid to injured workers are paid by the Worker's Compensation Board out of this fund. No contributions from employees, either directly or indirectly, are permitted. All claims for compensation are received and decided by the Worker's Compensation Board whose decision is final.

Benefits under the Act include periodic payments to a worker during the period of temporary disablement (generally 75 percent of average earnings) or an award for permanent disability in the form of a monthly pension for life. Sometimes payment is made in a lump sum. All necessary medical aid, including hospitalization, and rehabilitation (specialized treatment to help an injured worker regain the fullest use of individual capacities) is provided. In case of death by accident, a fixed monthly payment is paid to the dependents of a worker. In addition to a monthly pension, a widow receives a lump sum payment and an allowance for funeral expenses.

The Alberta Act is reviewed by a special committee of the provincial legislature every four years to bring it up-to-date with modern ideas and changing costs.

WORKER'S COMPENSATION BOARD

In Alberta, the Worker's Compensation Board must consist of at least three members who must devote the whole of their time to their duties and engage in no other employment. They must retire upon reaching the age of seventy. The board has full and final jurisdiction to determine the amount of compensation, and pay the amount due to workers or their dependents. No appeal to the courts is provided for in the Act. The only possible route into the courts would be in a situation where the board has knowingly exceeded its jurisdiction, and in that event, there may be a possible *action for certiorari*. Under a write of certiorari, the hearings before a committee may be examined by the court, and the decision may be declared void if the committee was found to have made an error as to law, fact, or jurisdiction. The error must be apparent in the record of the proceedings.

Injuries Covered

Any personal injury caused by an accident arising out of and during the course of employment is covered by the Act, unless the injury is caused by the serious and willful misconduct of the workers. Where a worker is found dead at a place where he/she had a right to be during the course of employment, it is presumed that the death resulted by an accident arising out of and during the course of employment, unless rebutted by sufficient evidence.

When workers are disabled or die as a result of industrial disease, they or their dependents are eligible for compensation just as if it had resulted from personal injury by accident, as long as it can be shown that the disease was caused by the nature of their employment at any time within twelve months prior to the date of their disablement. However, workers must not have willfully and falsely represented themselves as not having previously suffered from the disease.

Reporting of Accidents

Application forms for workers and report forms for employers and doctors are supplied by the Board. Employers should keep a complete record of all accidents and injuries and any first aid treatment provided, even for minor injuries. They may also obtain accident and first-aid record books from the Board.

When workers are injured, their employers should be notified as soon as possible, and given the full details of the accident in order that they may not be filed more than one year after the accident. This time limit can be extended if notice of the accident is given to the employer as soon as practicable and if the Board considers the claim to be a just one.

Safety and First Aid

The Board may require an employer in an industry to maintain any first aid appliances and services that it orders. The Board may also appoint people to inspect the premises of an employer to ensure that proper precautions are being taken to prevent accidents. The Board is also entitled to determine what measures of safety devices should be installed to prevent accidents and diseases, and may require an employer to install any safety device which it deems necessary. If the Board considers that an accident was due to the failure of an employer to comply with such directions from the Board, it may collect a penalty. On the other hand, where the Board is convinced that an employer is taking all proper precautions to prevent accidents, and where an employer has a consistently good safety record, the Board may reduce the employer's contribution to the fund. On the other hand, it can add to the employer's assessment, if convinced that sufficient safety measures are not being taken.

Compensation Payments

The maximum compensation for total disablement is 75 percent of one's earnings. Payment is usually made every two weeks, and continues as long as the worker is totally disabled. The size of the worker's family has no effect upon the amount of compensation paid, since payment is based upon a percentage of the worker's earnings. On the other hand, it is not reduced if he or she has private sources of income. Workers who are dissatisfied may request that their claim be re-examined if further information relating to the injury arises, or if there is new medical evidence of further disability arising out of a compensable injury. Workers do not pay income tax on compensation benefits.

Other Benefits

The Board will provide such things as crutches and artificial limbs, and keep these devices in good order or replace them as long as the disability continues. If such devices are broken during the course of employment or simply wear out, the Board will also replace it. The Board may also pay an additional sum to compensate an injured worker who wears a prosthetic device, for the extra wear on his clothing caused by the use of such a device. The Board will also replace or repair broken dentures as long as the dentures were being used at the time of the accident. Similarly, it will replace and repair eye glasses broken by accident.

If workers require treatment at a place other than where they normally reside, the Board is authorized to pay them a subsistance allowance while they are undergoing treatment. If there is a need for further treatment which can be related to the original injury, treatment will be provided for even after the worker has returned to the job and compensation payments have been discontinued. An injured worker may refuse surgery, but if surgery is considered essential to promote recovery, compensation may be reduced or suspended by the Board. Any worker receiving treatment is not supposed to leave the province without first obtaining permission from the Board.

The Board operates a rehabilitation centre in Edmonton offering specialized treatment, however, the patients do not reside there, but must make their own arrangements for private accomodation. The Board also provides retraining, training on the job, or upgrading of education when an injured worker is considered fit to resume employment. However, the Board is not responsible for finding a new job for the injured worker, although it has a vocational rehabilitation counsellor who will assist the worker. Once the worker has been declared fit to work, but cannot find employment, the Board is not bound to pay any further compensation. The worker would then have to go to the Unemployment Insurance Commission.

Review of Claims

The claims department of the Worker's Compensation Board decides whether or not a particular injury is compensable and if it is, to what percent. An aggrieved party dissatisfied with that decision may, by written request, ask the Board to establish a review committee to review the record. That committee may require the worker to submit to a medical examination by a physician. A further appeal of the decision of the review committee lies with the Board. Individuals going through this procedure may be represented by any person they choose.

Accident Prevention

Worker's compensation involves an after-the-fact solution to the problem of worker safety. There are a few, very limited steps that a worker can take to help prevent job related accidents.

Joint Work Site Health and Safety Committees with equal labour and management representation have been established by some employers on a voluntary basis. They consider job site conditions and recommend improvement to the employer. The Committee has no enforcement power. They may only make recommendations to the employer and inform workers of any health hazards or safety measures present in their work environment.

When unsafe conditions warrant it, the government may require the formation of such a Committee. If you believe your work site needs such a Committee and your employer refuses to form one voluntarily, contact the Minister of Worker's Health and Safety.

Give the reasons for your request. It is unlikely that such a Committee will be ordered without a specific listing of hazardous conditions on the work site.

Remember, the limitations of such a Committee. It will only be useful when both workers and management are interested in and willing to carry out the Committee's recommendations.

The Inspection Branch of the Department of Occupational Health and Safety, which has regional offices throughout Alberta, will hear specific complaints regarding conditions on the work site. Where the complaint comes within its power, an Inspector will visit the plant and may order changes. These orders are enforceable by the Courts.

The Department only deals with unhealthy or unsafe conditions. Although you may believe that your plant is too hot or too cold or too dark, it is the policy of the Department to investigate only conditions that are clearly hazardous to your health. They don't treat heat or lighting as matters within their realm.

If performing certain work would bring imminent danger to your health or safety, you may legally refuse to do such work. Your employer can't discipline you for this refusal. Unfortunately, the practical protection afforded here is minimal. If there is a dispute over your refusal, you will be required to show that there was no way to safely carry out the order and that the danger to you was immediate.

Remedies

You now know some of your rights as an employee, however, knowing your rights and enforcing them can involve very different problems. If you believe that your rights have been violated, speak to your employer. Explain what you feel you are owed and why. If that produces no results, there may be, depending on your problem, several alternatives open to you.

The same people who answer your questions as to what rights apply to you may be able to help you enforce those rights. If you are denied a right guaranteed by your employment contract or the Employment Standards Act, or are owed wages by your employer contact your regional office of the Standards Branch of the Department of Labour. Bring your complaint as soon as possible. Delays may prejudice your case. The Branch will only act to recover wages owed to you in the six months immediately preceeding the date of your claim.

The Standards Branch will investigate your complaint and bring pressure on your employer where they consider your claim valid and within their authority. If they cannot convince your employer to voluntarily correct the situation, they may prosecute the case on your behalf. Because the Branch is handling your complaint themselves, you will have the benefit of their experience and legal advice. You will be spared the difficulties of handling the claim yourself and the expense of hiring a lawyer.

However, you should remember that your case will be in the hands of the Branch and they will control when and how it proceeds. As with many government agencies, you may find them slow in dealing with your complaint.

They may also refuse to handle your case for any number of reasons. This refusal does not necessarily mean that your claim is invalid and will not later stand up in court. If you do take your claim to them, the Branch will control what rights you pursue. If you and the Labour Standards Branch are able to agree as to what rights and the amount of damages you will claim, this may well be the best course of action for you. If you cannot agree, you will have to take the court route.

If an employer violates your legal rights, you will probably be able to sue in Court. If owed back pay, this is a debt collectable in Court the same as any other debt. If fired without proper notice, you can sue for wrongful dismissal. If the employer has violated a term of your employment contract you can sue for breach of contract. If the employer has neglected your safety, that negligence may be actionable.

There are a number of legal actions available and this list is by no means exhaustive. However, there may be several problems with this alternative. Legal fees and court costs may make it expensive and impractical. You may be awarded some costs by the court should you win your case. But this will not totally reimburse you for your expenses and if you lose the case, costs may be awarded against you. You should also remember that actions must be brought within certain time limits. You may lose your case solely because you failed to act within the required time.

If you believe you have a legal cause of action and wish to pursue it, get legal advice as soon as possible.

Obtaining Employment

(1) The Department of Manpower

The responsibility of finding employment falls primarily upon the individual; although there are agencies whose object is to assist you to obtain employment. The federal government operates such a service through its Manpower offices, which refer workers to employers who have listed available positions with the Manpower office. This is done primarily on the basis of suitability, skill, length of time of registration with the office, family responsibilities, length of unemployment, and so on.

(2) Private Employment Agencies

Under the Employment Agencies Act, no employment agency may demand, either directly or indirectly, or collect any fee or other compensation from a person seeking employment. An employment agency means a business which secures employment for people or evaluates people for employers wanting employees. No fee may be charged for information respecting employers. No fee may be charged for securing or endeavouring to obtain employment for a person or for providing him with information in relation to possible employment sources. Furthermore, where there is a legal strike or lockout in progress, an

employment agency may not send or assist in sending any person to take employment in such a place without informing that person of the existence of the strike or lockout.

The way in which most employment agencies operate, however, is not to demand a fee for finding employment. Rather, they contract to employ the particular individual. They then enter into contracts with prospective employers to provide workers. Thus, for example, it would not be the farmer or manufacturer hiring the individual, but rather the employment agency who would send you to a particular sight to work. Workers should be somewhat careful when dealing with such agencies, and be very sure of the terms of employment. For example, it may well be that the employment agency is being paid $4.00 or $5.00 per hour by a company seeking workers, whereas they are paying the individual whom they have hired only the minimum wage.

(3) Union Offices

Prospective workers may find employment through a union office. Under many collective agreements, employers must hire workers through the union office. Normally, the worker will have to join the union and go to the bottom of the union list to wait for his or her name to rise to the top.

(3) Apprenticeship

Another form of employment is apprenticeship. An apprentice is a worker who has agreed to serve an employer for the purpose of learning and being taught a trade by the employer. The object of the contract is the learning process rather than just the provision of service. The law relating to apprentices in the Province of Alberta is contained in the Apprenticeship Act which provides that a person who is at least sixteen years of age is entitled to enter into an apprenticeship. The Act states that no person who is eligible to be an apprentice in a designated trade, and who has not completed the period of apprenticeship, shall be employed in that trade unless authorized by the Board of Industrial Relations to enter into a contract of apprenticeship. The designated trades are those established by an order of the Board, and are as follows:

> Agricultural mechanic, appliance serviceman, auto body mechanic, baker, bricklayer, carpenter, cook, electrical mechanic, commercial electrician, power electrician, electrician, floor covering mechanic, gas fitter, glass worker, heavy duty mechanic, heavy equipment operator, instrument mechanic, ironworker, insulator, lather, machinist, millwright, motor mechanic, painter and decorator, partsman, plasterer, plumber, steam fitter, radio technician, refrigerator mechanic, roofer, sheet metal mechanic, steel fabricator, tile setter, agricultural mechanic, instrument mechanic, cabinet maker, and waterwell driller.

The contract of apprenticeship must be in a form prescribed by the Board and must be registered by the employer with the Board's director. The contract must be signed by the apprentice, or if you are under the age of eighteen, by your father (or mother, in the case of death or incapacity of the father) or by a guardian, if both are dead; or if there is no parent or guardian, then by a Court of Queen's Bench judge. It must, of course, also be signed by the employer.

Terminating a contract of apprenticeship requires the approval of the Board. Transfers of apprenticeship from one employer to another may be arranged, but they must be done through the director. Once the apprenticeship period has been successfully completed, a Certificate of Qualification may be issued. As well, a Certificate of Qualification may be issued without examination to a person holding a valid Certificate of Qualification issued by recognized provinces other than Alberta, provided that the certificate is one of those recognized by the provincial advisory committee as being the equivalent of an Alberta Certificate of Qualification.

Exercise 1

By placing the letter T or F in the space provided at the left, indicate whether each of the following statements is true or false.

_____ 1. There are still today, many important categories of work in which the employees typically are not unionized.

_____ 2. Labour legislation is, generally speaking, low in priority in comparison to civil rights.

_____ 3. The Federal Department of Labour was established in 1910.

_____ 4. The Canada Labour Code sets only minimum hours of work.

_____ 5. Both employees and employers must contribute to the unemployment insurance fund.

_____ 6. The federal government makes no contribution to the unemployment insurance fund.

_____ 7. The provincial Attorney-General is responsible for the administration of all regulations designed to provide proper working conditions and adequate levels of pay.

_____ 8. The Alberta Employment Standards Act specifically states that there must be at least four hours of rest between shifts.

_____ 9. A child under the age of fifteen may not be employed.

_____ 10. An employer must give to each of his or her employees, after each year's employment, an annual vacation of at least two weeks with regular pay.

_____ 11. A person who has worked for a company more than two years must be given seven days notice if the employment is to be terminated.

_____ 12. There is no law that requires an employer to issue a statement of earnings and deductions to employees.

Exercise 2

From the following list in Section A, match the correct answer with the appropriate blank in Section B. Do not use an answer more than once.

Section A

journeyman	Federal Department of Labour
prevented	accident fund
ratified	a claim for wages
Worker's Compensation Board	collective bargaining
indigent	apprenticeship

Section B

1. Compensation from this fund is paid to injured workers. _____
2. A civil matter which would ordinarily be processed through the courts. _____
3. The process of establishing conditions of employment by negotiations between an employer and a trade union. _____
4. A term which means "confirmed." _____
5. It has a duty and power to inspect all places of employment to see that all machinery and appliances are safe or to determine what more suitable safety devices are necessary. _____
6. A person who has completed the required period of apprenticeship, has written and passed the necessary tests. _____
7. It determines wage rates and hours of work in Federal Government construction projects. _____
8. All provinces have regulations for a combined training-on-the-job and trade school training program. _____
9. Poor and needy, and dependent on public support. _____

Exercise 3

1. The initial statutes passed in the labour reform movement dealt with what types of objectives?

   (1) _____

   (2) _____

   (3) _____

   (4) _____

   (5) _____

2. Why is it that the various provincial governments have passed most of the labour legislation in Canada?

   _____

   _____

   _____

3. The Federal Department of Labour was established to aid in preventing and settling labour disputes. Briefly describe the four major areas into which most of its work now falls.

   (1) _____

   _____

   _____

   _____

   _____

   (2) _____

   _____

   _____

   _____

   _____

(3) _____

_____

_____

_____

_____

(4) _____

_____

_____

_____

_____

4. What is the test used to determine whether someone is an employee or self-employed?

_____

_____

5. (a) Name the department of the provincial government which is responsible for the administration of all regulations which provide for proper working conditions and adequate levels of pay.

_____

(b) Name the Board which administers the Alberta Employment Standards Act.

_____

6. In Alberta industries may establish their own hours of work, minimum wages, holidays with pay, and working conditions if two requirements are met. Give these requirements.

(a) _____

_____

_____

(b) _____

_____

_____

7. Name six industries which are exempt from the hours of work regulations contained in the Employment Standards Act.

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

(6) _____

8. Children between the ages of twelve and fifteen years of age are allowed to be employed in the following occupations:

(a) _____

(b) _____

(c) _____

(d) _____

9. What must an employee receive if he is required to work on a general holiday?

_____

_____

_____

10. In what situations is a notice of termination of employment not required?

(a) _____

_____

(b) _____

(c) _____

(d) _____

_____

(e) _____

_____

11. In one well-constructed paragraph describe the major provisions of the Individual's Rights Protection Act.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

12. It has been said that the Worker's Compensation Act is a type of collective liability. What is meant by this?

_____

_____

_____

_____

Exercise 4

1. Ruth Pitts, seventeen years of age, was offered a position as a waitress in a summer resort during her summer vacation. The hours were to run from 7 a.m. to 7 p.m., six days a week. Do you think Ruth would be permitted by law to accept the offer? Why?

_____

_____

_____

_____

2. Would your answer to number 1 be the same if the hours of employment were from 7 p.m. to 7 a.m. in an all-night restaurant? Why?

_____

_____

_____

_____

_____

3. Sarah Thomas, fifteen years of age, put in an application for employment at the local corner grocery store. If she is successful in obtaining this job, what restrictions does the law impose on the store in regards to her hours of work and supervision required?

_____

_____

_____

_____

END OF LESSON 19

LESSON RECORD FORM

3430 Law 30

Revised 88/11

FOR STUDENT USE ONLY

Date Lesson Submitted

_____

Time Spent on Lesson

_____

(If label is missing or incorrect)

File Number

_____

Lesson Number _____

FOR SCHOOL USE ONLY

Assigned Teacher: _____

Lesson Grading: _____

Additional Grading E/R/P Code: _____

Mark: _____

Graded by: _____

Assignment Code: _____

Date Lesson Received:

_____

Lesson Recorded _____

Student's Questions and Comments

Apply Lesson Label Here

Name _____

Address _____

Postal Code _____

Please verify that preprinted label is for correct course and lesson.

Teacher's Comments:

_____

Correspondence Teacher

St Serv 1-86

ALBERTA DISTANCE LEARNING CENTRE

MAILING INSTRUCTIONS FOR CORRESPONDENCE LESSONS

1. BEFORE MAILING YOUR LESSONS, PLEASE SEE THAT:

(1) All pages are numbered and in order, and no paper clips or staples are used.
(2) All exercises are completed. If not, explain why.
(3) Your work has been re-read to ensure accuracy in spelling and lesson details.
(4) The Lesson Record Form is filled out and the correct lesson label is attached.
(5) This mailing sheet is placed on the lesson.

2. POSTAGE REGULATIONS

Do **not** enclose letters with lessons.

Send all letters in a separate envelope.

3. POSTAGE RATES

First Class

Take your lesson to the Post Office and have it weighed. Attach sufficient postage and a green first-class sticker to the front of the envelope, and seal the envelope. Correspondence lessons will travel faster if first-class postage is used.

Try to mail each lesson as soon as it has been completed.

When you register for correspondence courses, you are expected to send lessons for correction regularly. Avoid sending more than two or three lessons in one subject at the same time.

St. Serv. 9-91

HOW EMPLOYERS MAY ORGANIZE THEIR BUSINESS

Business organizations in Canada may be classified in the following ways:

(1) A single proprietorship

(2) A partnership

  (a) A general partnership
  (b) A limited partnership

(3) A limited company, which is also called a limited liability company, a corporation, or a joint-stock company.

Single Proprietorship

A single proprietorship may have a few employees or a number of employees, but it is owned by one person. In such a business there is no conflict about policy because the owner does not have to consult anyone. As it is his/her own business, the owner is bound to spend interest and effort to make it a success. However, managing an expanding business may become a burden for one person.

Usually, a single proprietor will keep the business liabilities and assets separate from his/her personal affairs. However, if the business gets into financial difficulties, the creditors may claim against the proprietor's personal financial resources and property. If such a situation should occur, the proprietor cannot escape liability simply by giving away all of the property to a spouse or other relative or friend. According to law, such a transfer would be null and void since its purpose would be to defraud creditors.

Partnerships

A partnership is the relation which exists between persons carrying on business in common for profit; it must be a business carried on by two or more persons for mutual benefit.

Persons who have entered into partnership with one another are called a *firm*, but the firm name, as such, is only a short way of expressing the names of all the partners. The firm itself has no separate legal existence. Every partner in a firm is liable jointly with the other partners for all the debts and obligations of the firm which have accumulated while they are partners.

Each partner is an agent of the firm. The acts of any one partner directly affects each partner's private as well as business assets. A general partner is personally liable for the firm's debts. Failure or bankruptcy of the firm may result in the loss of personal property along with the firm's assets. One partner using poor judgement may ruin all the partners. Each partner owes a high degree of faith to the other partners.

A partnership has no permanency as an organization. It may be dissolved by the completion of the work for which it was formed, or by the desire of the partners to terminate their business arrangement. Also, the retirement, incapacity, death, fraud, or some criminal act of one of the partners may cause the dissolution of the partnership.

Persons may be associated in business in various ways without being partners. The general rule for a partnership to exist is that there must be a common fund or sharing of profit. All of the partners must share all of the profit.

Joint or common ownership of property, and joint or common tenancy by renters, do not constitute a partnership.

Formation of a Partnership

When two or more persons combine to carry on a business with a view to sharing resulting profits, the legal relationship of these persons is that of a partnership. It may be created by an express or an implied agreement between the parties concerned. The agreement may be oral or in writing or even by conduct.

In Alberta a partnership may have from two to twenty members; if there are more than twenty, they must register as a limited company. Also, a partnership must be registered in the courthouse for the area in which the firm is carrying on business within six months after the formation of the partnership. Persons who are associated in partnership for trading or manufacturing purposes must sign a certificate specifying the name of the partners, the firm name, and the time during which the partnership has existed, and assuring that the persons therein named are the only members of the partnership. Whenever there is a change in the name of the firm a new certificate must be signed and filed.

The great advantage of a partnership is the active part which each partner may take in the operation of the business. The partners may combine their resources. It is not necessary for each partner to contribute money to the business; some may contribute money, but others may contribute such things as goods, labor, or some particular skill. For example, one partner may be a good salesperson; another may be a good bookkeeper. The partners have everything to gain by their efforts; the harder they work, the more successful the business is likely to be. There is considerable freedom of action in a partnership. It is possible to have informal meetings and make quick decisions on current problems on short notice.

The feature which distinguishes a partnership from a company is incorporation. A company is considered to be a legal entity (being) separate from the members forming the company, whereas a partnership has no legal existence separate from its individual members or partners.

A partnership may be classified as being either general or limited.

General Partnership

Every partnership must have at least one general partner. In most firms, all the partners are general partners. General partners are co-owners of the business; they share in the management and in all business gains and losses; they are held out to the public as partners; they have unlimited liability for the firm's debts.

When two or more persons are engaged in an undertaking without any express partnership agreement, the following facts are considered to be evidence of the existence of a general partnership agreement:

1. They are carrying on a business in common.

2. Each of them participates in the management of the business.

3. They share in the profits of the business.

4. Each party is prepared to bear part of any loss incurred by the business.

The Partnership Act of the province states that certain circumstances do not in themselves create a partnership unless there is further proof that the parties intended to be partners. Such circumstances would include:

1. Joint or common ownership of property, whether or not the owners or tenants share the profits from its use.

2. An agreement to pay a debt by installments or otherwise out of profits.

3. Sharing of profits by a servant or agent as payment for services rendered.

4. Receipt by a spouse or child of a deceased partner of an annual payment out of the profits of the business.

5. Receipt of interest by the lender of money to the business at a rate which varies according to the profits made.

Limited Partnership

Individuals may wish to invest some money in a firm, but at the same time may not wish to be liable for any more than the amount invested. They may do this if their name does not appear in the firm name and if they take no part in the operation of the business. They are called "limited partners" and must be registered as such. Where there is a limited partner the firm must have one or more partners who are general partners, and who as general partners are liable for the debts of the partnership even to their private assets.

Limited partners' liability to the public is limited to capital contributed by them. If they withdraw their capital, they are liable for the firm's debts to the amount withdrawn. If limited partners take any part in the management of the firm, they automatically become general partners.

The Partnership Agreement

The formation of a partnership requires merely a valid agreement entered into by the interested parties. Such a contract is usually entered into by express agreement, although it may be in whole or in part implied. However, there are so many possible points involved in connection with a partnership that the agreement should be clearly and fully expressed. It should be preferably in writing. Some of the important items to be covered are (1) the parties to the agreement; (2) the specific nature, scope, and limits of the business; (3) the duration of the business; (4) the amount of the original investment and provisions for future investment; (5) provisions regarding salaries, withdrawal of funds, interest on investment, and the division of profits; and possibly (6) some provision regarding terms under which a partner may withdraw from the firm.

The importance of having the above terms specifically agreed upon is emphasized by the fact that, where they have not been expressed, certain statutory rules apply. Unless the agreement provides otherwise, the following rules take effect:

1. The partners are entitled to share equally in the profits and capital of the business and must contribute equally towards losses, whether of capital or otherwise. This rule applies even though the original investments of the partners were not equal.

2. The firm must idemnify partners in respects of payments made and personal liabilities incurred by them in (a) the ordinary and proper conduct of the business of the firm, or (b) about anything necessarily done in the preservation of the business or property.

3. Every general partner may take part in the management of the business.

4. Partners are not legally entitled to receive a salary for acting as partners. The renumeration which partners receive from the partnership business is charged against their share of the profits.

5. No person may be introduced as a new partner without the consent of all the existing partners.

6. A majority of the partners may decide any differences arising out of the ordinary business of the partnership, but no change can be made in the nature of the membership of the business without the consent of all existing partners.

7. Where no fixed term for the duration of the partnership has been agreed upon, any partner may terminate the partnership by giving notice of intention to do so to the other partners.

8. If partners, without the consent of the other partners, carry on any business of the same nature as, and competing with, that of the firm, they must account for and pay over to the firm all profits made by them in that business.

Duties and Responsibilities of Partners

Partners must be able to trust one another. Each is an agent of the others and has duties comparable to those of an agent. Partners must (1) always act in good faith and in the best interests of the firm, (2) be loyal to the firm and put the firm's interest ahead of their own, and (3) always use their best skill and judgment in looking after the firm's affairs.

Partners are always liable to the other members of the firm for their share of the firm's debts. Partners share losses in the same proportion that they share profits. If one partner is forced by creditors to pay all the firm's debits, he/she in turn, has a right against the other partners for the payment of their share.

Each partner is an agent for the firm, and the ordinary rules of agency apply. The basic rule is that each partner may bind the firm by any act that is within the apparent scope of the firm's business. Any act of a partner that is outside the apparent scope of the firm's business is not binding on the firm.

Each general partner has an unlimited liability for all the debts of the partnership that are incurred while a partner, even to the extent of the partner's personal assets.

When a new partner is taken into an existing partnership, the new partner is not liable for debts incurred by the partnership before becoming a partner unless he/she has assumed such liability by signing an agreement to that effect.

When a partner retires, the partners usually make some kind of agreement among themselves with regard to the payment of the existing firm's debts. This agreement, however, is not binding on existing creditors. Retiring partners remain liable for all the debts created while they were members of the firm until the debts are paid. They are also liable for all new debts created after they retire until actual notice of their retirement is given to all old creditors, and general notice, by publication in the official gazette of the province, is given to all possible new creditors who know of their former relationship with the firm.

The estate of a deceased partner is liable for debts of the firm contracted up to the time of death, subject to the prior claims of creditors against the deceased's personal estate. Any value remaining in the estate after the personal creditors have been satisfied is then available to creditors of the firm of which the deceased was a partner. The estate is not liable for partnership debts contracted after the date of death.

Dissolution of a Partnership

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the business. Some of the specific things that cause a change in the relationship, and thus bring about a dissolution, are the following:

1. If, in the original partnership agreement, the partners agreed that the firm would terminate at a specified time, then, when that time arrives, the firm is dissolved. This does not necessarily mean that the partnership needs to be discontinued. If the partners agreed to continue the firm, either expressly or by implication, they may do so.

2. Like any other contract, a partnership agreement may be changed at any time by the will of all the partners (mutual agreement).

   If a new partner is admitted to the firm, the relationships of the old partners is changed and the old firm is dissolved and a new one is formed. A person who buys another's interest in a partnership cannot become a partner without the consent of the other members of the firm.

3. When one partner withdraws or is expelled from the firm by the other partners, there is a change in the relationship and the old firm is dissolved. If the remaining partners choose to do so, they may continue in business together in a new partnership.

4. When one partner dies, the effect on the firm is just the same as when a partner voluntarily withdraws — that is, the partnership is dissolved.

5. When the firm is bankrupt or only one member is bankrupt, the general effect is the same. There is no longer the relationship that existed before, so the firm is dissolved.

6. Any one of the partners has the power to dissolve the partnership. If they do so in violation of the partnership agreement, however, they will be liable to the other partners for breach of contract. Many times some of the partners may honestly believe that the best interests of the firm demand a dissolution, but they are afraid to exercise this power to dissolve for fear of being sued. Under these circumstances, a partner may bring an action asking the court to order dissolution. The court may order dissolution when (1) a partner becomes insane or otherwise incompetent; (2) a partner has been guilty of such conduct that it is impossible or impracticable to continue carrying on in a business with this person; (3) the business can be carried on only at a loss; (4) other circumstances render a dissolution advisable.

Distribution of Assets

An accounting of the firm's financial affairs is necessary to determine how the firm's assets are to be distributed. The rules for the distribution of the firm's assets are the same, no matter what the reason for dissolution. In case the business is continued, however, the remaining partners leave their share in the firm and continue as before.

The liabilities of the firm are paid in the following order:

(1) those owing to creditors other than partners;

(2) money, other than capital, lent by one partner to the firm;

(3) the capital contribution of the partners; and

(4) profits owed to the partners.

If the firm is insolvent, all the assets go to pay the creditors and, in addition, individual partners are liable for any unpaid balance that the sale of the assets will not cover. If both the firm and one or more partners are insolvent, the firm creditors have first claim on the partnership assets, and then the creditors of the individual insolvent partners have first claim on the insolvent partner's personal assets.

Illustrative Cases

1. A partnership agreement may be oral, written or implied.

   Marr and Needham had entered into a partnership agreement and had acted as partners in accordance with the terms of the agreement. Later, Marr refused to be bound by the agreement claiming that it should be in writing. The court held that the agreement was binding as part performance of the terms clearly indicated the intention of entering into the partnership relationship.

2. Tenants in common are not a partnership, nor are they liable as partners.

   Fox and Junter jointly leased a stand of timber which was to be divided equally between them. Fox entered into a contract to sell Gordon a quantity of lumber, a part of which belonged to Hunter. Hunter refused to allow his lumber to be sold and the court held that they were not partners but tenants in common, and that each had a right to dispose of his own lumber only.

3. Special or limited partners, who take an active part in the management of the business, cease to be limited partners and become liable as general partners.

   Arneson and Butchart were limited partners in the firm of DeBow and Eiffels, coffee importers. While DeBow was absent in Brazil on the firm's business, Arneson and Butchart acted as advisors to Eiffels, who was in charge during DeBow's absence, and interfered actively in the management of the firm. In an action to recover payment of the firm's debts, Arneson and Butchart are named as general partners. The court held that, since they had taken an active part in the management of the firm, they were liable for the debts of the firm.

4. A general partner cannot bind the other members of the firm by any act not within the scope of the business.

   Fitch used partnership money to pay for shares in the Grenadier Coal Mine, and signed his application in the firm's name. The firm, which was engaged in selling electrical refrigerators, was made up of Fitch, Hume and Irving, who refused to confirm Fitch's contract. The court held that Fitch's act in buying shares was entirely outside the scope of the partnership business and that he had no authority, express or implied, to make Hume and Irving liable as shareholders in the Grenadier Coal Mine.

Limited Companies

A limited company is an association of individuals formed to carry on business as a legal entity, capable of rights and duties which are its own and not those of its members. The word *limited* signifies that the liability of the owners of the company, the shareholders, is limited to the amount they paid for their shares. Therefore, if the company becomes insolvent, the shareholders may lose to the extent of the value of the stock which they hold, but the loss stops there.

Limited companies may be created by:

(1) royal charters,

(2) special statutes, and

(3) Companies Acts.

Royal Charters

The first limited companies were set up in England; they were the early great trading ventures which were chartered by the Crown. The Hudson's Bay Company is an example of one of these royal charters.

Special Statutes

Companies may be incorporated by special statutes passed by the federal parliament or by any of the provincial legislatures. Examples of these are the Canadian Pacific Railway Company which was incorporated by a special federal statute, and the Alberta Gas Trunk Line which was incorporated by a special provincial statute. These companies, when formed, were given special appropriation powers to enable them to get the land they required.

Companies Act

Companies are usually incorporated under a general federal or provincial statute. Such general statutes, called *Companies Acts*, provide a method for incorporating companies without the necessity of a special statute being passed each time a company is to be formed.

The Companies Acts provide that generally a company may incorporate for any legal purpose.

Companies which intend to operate across all, or a good part of Canada, incorporate under the Federal Companies Act. Companies which intend to operate in only one or two provinces generally incorporate under the Provincial Companies Act for the province, or provinces, in which they plan to operate. For example, a company wishing to operate only in Alberta would incorporate under the Companies Act for Alberta.

Procedure in Forming a Limited Company

A company wishing to incorporate under the Federal Companies Act must obtain the required forms from the Secretary of State at Ottawa; a *petition* and a *memorandum of agreement*.

The petition covers the names, addresses, and occupations of the proposed members, the proposed name and address of the company, and the objects of the proposed company. The objects set out what the company plans to do; a company can do only what it is specifically authorized to do as stated in its objects clause. The petition also covers any other detail which the proposed members wish to apply to the company.

The memorandum of agreement is a contract signed by the proposed members in which they agree to incorporate and subscribe for a stated number of shares.

The completed petition and memorandum of association, and a specified fee, are sent to the Secretary of State in Ottawa for approval. If satisfied that all legal requirements have been met, a *letters patent* is issued, sometimes called a *charter*. This means that the original proposed members, and all who may thereafter become shareholders, are members of the stated limited company. At the same time the Secretary of State places a notice to this effect in the Canada Gazette.

In the provinces of Canada, three ways of incorporating limited companies are in effect. They are: (1) by charter, (2) by letters patent, (3) by memorandum of association. Alberta has adopted the memorandum of association method.

A company wishing to incorporate under the Alberta Companies Act must obtain the necessary forms from the Registrar of Joint Stock Companies for Alberta. A completed *memorandum of association* is required. Another form called the *articles of association* may also be completed. If no articles of association are submitted, the articles in the Alberta Companies Act apply.

The Alberta Companies Act provides that any three or more persons (or in the case of a private company, any two or more persons) associated for any lawful purpose may form a limited company by complying with the regulations and signing their names to the memorandum of association which must be sent to the Registrar.

Like the petition required for incorporation under the Federal Companies Act, the memorandum of association gives the names, addresses, and occupations of the proposed members, the proposed name and address of the company, and the objects of the company. The articles of association state the rules and regulations of the company. No Alberta company may be incorporated if its name is identical with, or similar to, a name already in use by a company in the same line of business because of the confusion which might result.

If the registrar approves the forms when they have been submitted, a *certificate of registration* is issued.

A company's existence begins as at the date of its certificate of registration; this is sometimes called its *birth certificate*.

When incorporation or registration has been completed, a certificate of registration is mailed to the company and a notice is placed in the Alberta Gazette.

The Board of Directors

The affairs of the company are managed by a board of directors. Directors as a general rule hold office for a year and, in the event of a vacancy occuring on the board during the year, the remaining directors may appoint another qualified person to fill the vacancy. In all other cases, the election of directors must take place at a general meeting of shareholders.

As a general rule, the directors can do anything which the company is incorporated to do. A statute, or by-law, or some provision in the articles of association, however, may require authorization by a general meeting of shareholders or compliance with some other requirement. The statutes provide that there are some things which can be done only with the sanction of the shareholders; as, for example, borrowing money, changing the place of the head office, authorizing the creation of an executive committee, appointing auditors, or authorizing the payment of salaries to the directors.

The shareholders cannot overrule or control the directors in the management of the affairs of the company within the scope of the director's authority. If the shareholders are dissatisfied with the management, their remedy is to elect new directors at the next annual meeting.

The directors' first duty is to the company, and they must not make use of their position for their own private advantage. If they have an interest in any contract made by the company, they will be obliged to account for or pay to the company whatever personal profits they make on the contract. This is a common problem since some people are members of the boards of directors of several companies. The directors, however, will not have to be accountable to the company for such profits if they first disclose their personal interest in the contract to their fellow directors and abstain from voting on the contract at the meeting of the board at which the contract is considered.

The Prospectus

Before an Alberta public company may commence business operations, a *prospectus*; that is, a notice or circular which sets forth the prospects of the company and the opportunities for gain which the company affords to public investors, must be filed. It must state:

(1) the date of incorporation

(2) the address of the registered office

(3) the names and addresses of the directors, executive officers and auditors

(4) full particulars of all securities issued

(5) the number of shares issued for a consideration other than cash

(6) commissions to be paid for securing subscription to stock

(7) estimated amount of preliminary expenses

(8) particulars of any property purchased by the company

By checking the prospectus carefully the government is able to protect the public, as far as possible, from any fraudulent practices on the part of the promoters of the company.

All Alberta companies are required to inform the government, through the Companies Branch, of any changes in location of the registered office, in the board of directors, and of any issue of shares. Changes in capital structure and changes in the company's name are not effective without a certificate from the Companies Branch. The company is also required to file an annual statement of operations, including a financial statement, with the Companies Branch.

Companies which have been incorporated either under the Federal Companies Act or under an act effective in another province, may apply to the Companies Branch for a certificate of registration in Alberta.

If an Alberta company wishes to operate on a nationwide basis, it must become incorporated under the Federal Companies Act. If an Alberta company wishes to operate in provinces other than Alberta, but does not need nationwide incorporation, it may apply for registration in each of the provinces in which it intends to operate.

Classes of Shares

The *par value* of a share in a company is the value that the company assigns to a share before it is actually issued. When a share is without par value, the value of the share is determined either by what it sells for on the open market (the *market value*) or by the decision of the Board of Directors.

Acquisition of Shares

There are four different ways in which individuals may become shareholders in a company. These are:

(1) Subscription

In this case the individuals sign the original memorandum of association which is sent to the Companies Branch with the application for incorporation. This entitles them to an agreed number of shares of which, upon incorporation, they automatically become the owners.

(2) By Contract

Individuals may purchase shares from a company by entering into a contract for this purpose. The buyers submit applications for shares which constitute the offers of performance, and the approval of the applications by the directors constitutes acceptance. The general law of contracts applies.

(3) By Transfer

Financial firms and stockbrokers usually buy up large portions of available stock, even in the case of new companies, and sell them to the public. This method is the commonest of the four methods of acquiring stock.

(4) By Succession

A person may become a stockholder by inheriting shares from a deceased stockholder.

Dividends

Companies are generally formed for the purpose of making money for profit and distributing that profit. Dividends are the profits which are distributed among the shareholders. However, the mere fact that the company has made a profit does not mean that the shareholders must receive it in the form of dividends. Dividends are declared at the discretion of the board of directors, who must also consider the advisability or the necessity of setting aside a portion, or all of the profits, for contingent liabilities or for future expansion of the business. Dividends may be paid in the form of a stock dividend which the shareholders receive in fully paid up shares of stock instead of in cash. Dividends may be paid only out of profits. If the directors should pay them out of the capital fund, they become personally liable for the amount so paid.

Right to Vote

The right to vote at stockholder's meetings is a fundamental right of a shareholder. Each shareholder entitled to vote must be notified as to the time and place of the annual meeting and must be sent a copy of the annual financial report of the company which is to be considered at the meeting. A shareholder has one vote for each voting share held (some types of shares do not carry voting rights). If shareholders are unable to attend the annual meeting they may vote by proxy. A proxy is an authorization in writing given to another person to vote in the place of the absentee.

Comparison of a Limited Company with a Partnership

(1) A limited company is a *person* separate from the people who compose it. A partnership is not; it is the people who compose the partnership.

(2) A limited company is said to have perpetual succession; if members die, someone inherits their shares. A partnership does not have perpetual succession; the death of a partner breaks up the partnership.

(3) In the case of a limited company, the members or shareholders do not own the company's assets; they belong to the company. In a partnership, the partners own the assets of the firm.

(4) The members of a limited company can transfer their shares, subject to the regulations of the company. Partners cannot do this; to take in another means a reorganization of the firm.

(5) A limited company has limited liability; the members of the company are not liable for the debts of the company beyond their investment in the company. Partners are personally liable for the debts of the partnership to the full extent of their private property.

(6) Members may not act as agents of a limited company. In a partnership each member is an agent of the firm.

(7) A member of a limited company may contract with the company as an individual. A partner may not contract with a partnership as an individual.

Special Classes of Companies

Co-operatives and Credit Unions are considered to be special classes of companies. They are regulated by the Co-operative Associations Act and the Credit Union Act for Alberta.

Co-operatives

A business which is owned by its customers or patrons is called a co-operative. A co-operative is usually organized as a company under statute of the province in which it is to be located. The net profits of a co-operative are distributed among the stockholders in two ways:

(1) A dividend on the capital stock, which is distributed to each stockholder in proportion to the number of shares owned.

(2) A patronage or participation dividend distributed to each stockholder in proportion to the amount of business done with the co-operative.

The Co-operative Associations Act for Alberta

If any ten or more persons wish to form a Co-operative Association in Alberta, they may do so if they comply with certain regulations.

An application is made to the appropriate government official, the Supervisor of Co-operative Activities. This application is made on a special form known as a memorandum of association. This is the same type of form as is required to incorporate a limited company in Alberta.

The memorandum of association must state the proposed name of the association, its object, the place in Alberta at which the registered head office is to be located, the amount of each share, the number of shares, and the terms of membership.

The memorandum of association must be accompanied by a copy of its bylaws, that is, its rules for regulating its own affairs and its dealings with others.

The memorandum of association, the copy of the bylaws, and the required fee must be sent to the Supervisor of Co-operative Activities. If approved they are then sent to the Registrar of Joint Stock Companies. The Registrar then proceeds with the registration and issues a certificate of incorporation. The co-operative is then in existence.

Co-operatives, which may be incorporated for any legitimate consumer, producer, marketing, or service endeavour, may be formed for either or both of the following purposes:

(1) for conducting and carrying on any co-operative undertaking or enterprise, or any co-operative store, industry, or business, either wholesale or retail.

(2) for conducting and carrying on in connection with any store, industry, or business mentioned in (1), and any other business or industry for the manufacturing, processing, handling, marketing, distributing, or shipping produce of farmers, or other produce of persons who are members of the association.

With the approval of the Lieutenant-Governor-in-Council, the Supervisor of Co-operative Activities may prescribe standard bylaws from time to time. These bylaws will include the method of convening general and special meetings of the members of the association, the expulsion of members, the settlement of claims by the personal representatives of deceased members, the auditing of the books, and the appointment of directors to supervise the affairs and business of the association.

Unless provision is made in the bylaws to the contrary, persons of the full age of sixteen years may be members of the association and may enjoy all the rights of members, except that they may not be directors or managers of the association.

The capital of every association formed under the Co-operative Associations Act must be divided into shares of such values as may be determined by the bylaws of the association. Preferred shares subject to certain restrictions as well as common shares may be issued. The liability of shareholders is limited to the unpaid amount on the face value of their shares. Therefore, any shareholders who have fully paid up the amount of their shares are free from further liability.

The business of a co-operative is democratically controlled as a shareholder has only one vote regardless of the number of shares owned. Any one shareholder may obtain not more than ten per cent of the total shares. It is impossible, therefore, for one person or a small group of persons to obtain control. Voting by proxy is not permitted.

Credit Unions

Credit Unions are saving and loan associations operated by people with a common bond, such as a parish, club, lodge, labor union, occupation, or residence in a certain area. The purpose of a credit union is to serve the members of its own group.

If ten or more persons desire to associate themselves to form a credit union in Alberta, they may do so if they comply with certain regulations.

The Credit Union Act states that the capital of every credit union shall be unlimited in amount and shall be divided into shares of a par value of $5.00 each.

For the purpose of carrying out its objects, every credit union may do such things as receive money from its members, make loans to its members, make loans to other credit unions which are members, and draw, make, accept, endorse and issue bills of exchange such as promissory notes.

The Credit Union idea is not new. It began in Germany in 1848, in Canada in 1900, and in the United States in 1909. The idea was introduced to the North American continent by a Canadian, and the first credit union in Canada was established at Levis in the Province of Quebec.

Credit Unions are growing steadily in Canada; occupational credit unions are growing at a faster rate than the other types. There are now over four thousand credit unions in Canada with a membership of over two million.

Exercise 1

Complete the following statements.

1. A business may be organized in the following ways:

   (1) _____

   (2) _____

   (3) _____

2. A business carried on by one person as sole owner is called a

   _____

3. A partnership exists when _____

   _____

   _____

   _____

4. There are two types of partnership. These are:

   (1) _____

   (2) _____

5. When two or more persons are engaged in an undertaking without any express partnership agreement, the following facts are considered to be evidence of the existence of a general partnership agreement:

   (1) _____

   (2) _____

   (3) _____

   (4) _____

6. Some of the important items to be considered in any partnership agreement are:

   (1) _____

   (2) _____

   (3) _____

   (4) _____

   _____

   (5) _____

   _____

   (6) _____

   _____

7. Upon application, a partnership may be dissolved by a court order in the following cases:

   (1) _____

   _____

   (2) _____

   _____

   (3) _____

   _____

   (4) _____

   _____

8. What steps should retiring partners take in order to avoid liabilities of the partnership after their retirement?

   _____

   _____

   _____

   _____

9. Limited partners are not liable for the debts of the firm beyond

_____

10. After the dissolution of the partnership, the liabilities of the firm are paid in the following order:

(1) _____

(2) _____

(3) _____

(4) _____

Exercise 2

1. What are:

(a) Letters Patent? _____

_____

_____

_____

(b) Prospectus? _____

_____

_____

(c) Proxy? _____

_____

_____

2. State four ways in which a person may acquire shares in a company.

(1) _____

(2) _____

(3) _____

(4) _____

3. If, during the first year of operation, a company shows a profit, is it compelled to distribute it to the shareholders in the form of dividends?

_____

_____

_____

_____

4. In the name *Acme Superior Limited*, what does the word *Limited* signify?

_____

_____

_____

Exercise 3

Write one or more, well-organized paragraph(s) (150 - 200 words) comparing a partnership with a limited company as a business organization. Include the advantages and disadvantages of each type.

Exercise 4

In each of the following cases give your decision and your reasons for that decision. Elaborate as much as possible.

1. The partnership firm of T.H. Brace and Sons had owned and operated a men's clothing store for many years. Through a bad fire they were temporarily ruined and could not pay for their last purchases. One of the creditors went through their books and discovered that Roy Grant had invested $5,000 in the business and had been collecting a share of the profits for years, although he had never taken any active part in the business. He immediately sued Grant for the amount of his bill which was $7,500. Will Grant have to pay this? If not, how much, if anything, will Grant be liable?

2. Caine and Pratt were partners in a coffee bar. As security for a personal debt, Caine gave Lord a mortgage on the fixtures - counters, stools, freezers, etc., belonging to the firm, signing the firm's name to the mortgage. Pratt had no knowledge of Caine's action. Lord later seized the fixtures under the terms of the mortgage. Pratt sued for an injunction to restrain the seizure and to set aside the mortgage. Will Pratt succeed?

3. Milton sells men's shoes. There are two large plate glass windows in the premises which he occupies. Reimer wishes to start a men's clothing business and suggests that he occupy half the shop and one of the windows, and pay half his net profits as rent. Milton agrees and Reimer moves in. Reimer tells a supply house of his arrangement when he orders goods on credit. When Reimer is unable to meet his bill on time, the supply house sues both Milton and Reimer. Will the suit succeed?

4. Adams and Tucker form a partnership whereby Adams invests $50,000 in the business, and Tucker, $30,000. The partnership agreement does not specify how profits or losses are to be divided. What is the legal rule applying to this case?

5. Shawn, who owned a small lumber business and who often undertook building contracts, entered into an agreement with the Acme Sausage Co. Ltd., of which he was also a director, to supply materials and build an addition to the company's plant. What steps could Shawn take to avoid an accusation of conflict of interest in this situation?

Exercise 5 - Review of Lessons 17 through 20

Fill in the blank spaces in each sentence. Only one word is required for each space.

1. The law concerning the relationship between _____ and _____ is called the *Law of Master and Servant*.
2. If employees are injured in the course of their employment, they can be cared for under the _____ _____ Board.
3. If employees know that a machine is defective but continue to use it, they _____ recover damages.
4. Employers are always liable for breaches of their contracts committed by their _____.
5. If an employer has been held liable for the negligence of his/her employee, the employer may _____ the employee to recover damages.
6. An employer may dismiss an employee without notice for any of the following: (1) _____; (2) _____; (3) _____; or (4) _____.
7. The right of a union to represent certain employees is granted by the provincial _____ _____ Board.
8. It is at the _____ level that unions are first organized.
9. The most basic function of any union is that of _____ bargaining for its members.
10. Power to enact labour legislation has largely become a _____ matter.
11. The _____ _____ _____ Act provides that an employer shall not pay a female worker a lower wage than a male employee, for doing similar work.
12. Only _____ contribute to the Worker's Compensation Fund.

Exercise 6 - Review of Lessons 17 through 20

By placing the letter T or F in the spaces provided at the right, indicate whether each statement is True or False.

_____ 1. The same person is often both an employee and an agent.

_____ 2. Under no circumstance may an employer dismiss an employee without notice.

_____ 3. The Labour Relations Board will certify a union to act as agent for a group of employees if the union can show that it has the backing of at least 75% of the employees.

_____ 4. When a union has been certified to represent a particular group of employees, the employer must negotiate with that union.

_____ 5. A typical Conciliation Board which will look into a dispute between a union and management, consists of three members -- two of which are appointed by the Minister of Labour.

_____ 6. Power to enact labour legislation has become largely a federal concern.

_____ 7. Children under the age of 15 years may gain employment in any industry they wish.

_____ 8. Employees and employers contribute equally to the Canada Pension Plan.

_____ 9. Employees and employers contribute equally to the Worker's Compensation Fund.

_____ 10. The Alberta Employment Standards Act requires every employer to establish a pay period of not greater than one calendar month.

END OF LESSON 20

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